No. 208.

In Supreme Court of the United States,

OCTOBER TERM, 1898.

Brf. of Maltbie for Petitioner.

Supreme Court, U. S.
MAY 1 1899
JAMES H. MCKENNEY,
Clerk.

H. DRUSILLA MITCHELL,

PETITIONER,

v.

Filed May 1, 1899.

FIRST NATIONAL BANK OF CHICAGO,

RESPONDENT.

Petition for a writ of Certiorari to the U. S. Court of Appeals for the Second Circuit, in the case of the First National Bank of Chicago, Plaintiff in Error, vs. H. Drusilla Mitchell, Defendant in Error.

Certified Copy of Record of said case in said Circuit Court of Appeals.

Certified Copy of Record in Supreme Court of Errors and Superior Court, State of Connecticut, in the case of Freeman's Appeal from Doings of Commissioners.

Statement and Brief for Petitioner.

THEODORE M. MALTBIE, Counsel.

HARTFORD, CONN.:
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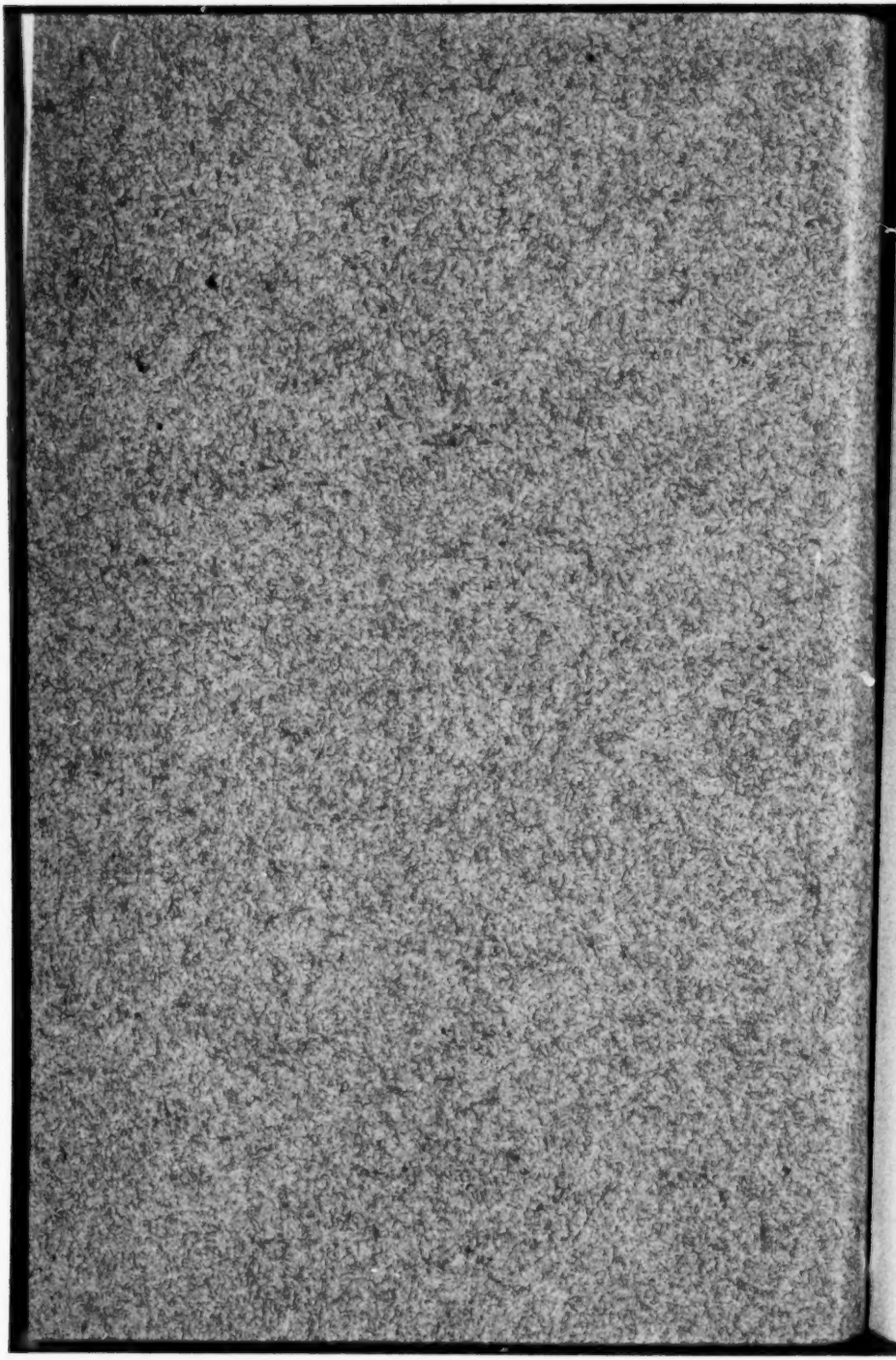

Supreme Court of the United States.

October Term, 1898.

H. DRUSILLA MITCHELL, *Petitioner,*

vs.

THE FIRST NATIONAL BANK OF CHICAGO,

Respondent.

Petition for a Writ of *Certiorari* to the Circuit Court of Appeals for the Second Circuit.

NOTICE OF FILING PETITION.

To the above-named Respondent and to William C. Case, Esq., and Percy S. Bryant, Esq., its Attorneys.

You are hereby notified that the within petition, together with the exhibits and statements and claims of counsel, hereto annexed, will be presented to the Supreme Court of the United States on the first Monday in May, 1899, at the opening of said court.

Dated at Hartford, this 24th day of April, 1899.

THEODORE M. MALTBIE,

Attorney for Petitioner.

Supreme Court of the United States.

October Term, 1898.

H. DRUSILLA MITCHELL, *Petitioner,*

vs.

THE FIRST NATIONAL BANK OF CHICAGO,

Respondent.

ACKNOWLEDGMENT OF SERVICE.

We hereby acknowledge due and legal service of the within petition for a writ of *certiorari* and notice of the time when the same will be presented, and that we have received a copy of said petition, with exhibits and statement and claims of counsel, and we consent that said petition may be filed in accordance with such notice.

Dated at Hartford, this 24th day of April, 1899.

WM. C. CASE,
PERCY S. BRYANT.
Attorneys for Respondent.

IN THE

Supreme Court of the United States.

October Term, 1898.

H. DRUSILLA MITCHELL, *Petitioner,*

vs.

THE FIRST NATIONAL BANK OF CHICAGO,

Respondent.

Petition for Writ of *Certiorari*, Requiring the Court of Appeals for the Second Circuit to certify to the Supreme Court, for its review and determination, the case of the First National Bank of Chicago, Plaintiff in Error, *vs.* H. Drusilla Mitchell *et al.*, Defendant in Error.

To the Honorable, the Supreme Court of the United States:

The petition of H. Drusilla Mitchell respectfully shows to this Honorable Court, as follows:

1. Your petitioner is a citizen of the State of Connecticut, and resides at Bristol in said State; the respondent is a banking association, organized under and by authority of the laws of the United States, and located and having its place of business at Chicago, in the State of Illinois, and is a citizen of the State of Illinois.

2. The respondent brought its action at law against your petitioner in the Circuit Court of the United States for the District of Connecticut, based upon a guaranty, claiming thirty thousand dollars damages by complaint and writ dated December 16, 1895, and returnable and returned to said court on the fourth Tuesday of April, 1896, and said Court had and took jurisdiction of said action entirely on the ground that the opposite parties in said action were citizens of different states.

3. After the bringing of said action, and before the return day thereof, viz., on the day of February, 1896, your petitioner made an assignment in insolvency in the Court of Probate for the District of Bristol, in the State of Connecticut, and such proceedings were thereupon had in said Court of Probate that Edward A. Freeman was appointed and qualified as trustee of the insolvent estate of your petitioner, a time was limited for the presentation of claims against said insolvent estate, and commissioners were appointed to receive and act upon such claims, and report to said Court of Probate the claims allowed and disallowed by them.

4. The respondents presented to said commissioners, and asked to have allowed to them, the claim upon the guaranty which was the subject matter of the action then pending in said Circuit Court, and said commissioners allowed said claim and reported to said Court of Probate that there was due said respondents, from your petitioner, the sum of $28,070.30.

5. Said Edward A. Freeman, as trustee of said estate, then appealed from the doings of said commissioners in allowing the claim of said respondent; which appeal being duly entered in the Superior Court for the State of Connecticut, at Hartford, on the first Tuesday of October, 1896, the respondents appeared to prosecute said claim in said court, and, under the rules of said court, filed its statement of claim in substantially the same form, and declaring upon the same cause of action as was declared

upon, and the subject matter of the action then pending in said Circuit Court of the United States; and the said Freeman, trustee, filed his answer thereto, and the parties were at issue as to whether the petitioner was indebted to the respondent as respondent alleged; and such proceedings were had, under the rules of said court, that, upon an agreed statement of facts, said Superior Court reserved said case for the advice of the Supreme Court of Errors of said State, upon the issues joined and facts agreed and stipulated by the parties; and the parties having duly appeared in said Supreme Court of Errors, and being fully heard, said Supreme Court of Errors, on February 23, 1897, rendered judgment and advised said Superior Court to disallow all and every part of the claim of the respondents; and said Superior Court, March 2, 1897, rendered judgment disallowing all and every part of the claim of the respondents against said insolvent estate, and that said Freeman, trustee, recover his costs; all of which fully appears in the exemplified copy of the proceedings of said Superior Court and said Supreme Court of Errors, and of the judgment rendered in each of said courts, attached hereto, and marked respectively Exhibit "A," Exhibit "B."

6. Thereafter, on the 7th day of March, 1898, the respondent and your petitioner in said action pending in the Circuit Court of the United States for the District of Connecticut being at issue identically as in said Freeman's appeal, decided by said Courts of the State of Connecticut, and having agreed *in totidem verbis* to the facts agreed upon in said Freeman's Appeal, said Circuit Court found the issues for the defendant and rendered judgment for the defendant therein, your petitioner, to recover her costs.

7. The respondent then brought its certain writ of error against your petitioner to the Circuit Court of Appeals for the Second Circuit for the revision of the errors alleged to exist in said judgment of said Circuit Court, which writ of error was

duly served, returned, and entered in said Circuit Court of Appeals, on the 9th day of April, 1898, and was duly argued in said court on December , 1898, and thereafter, on the 1st of March, 1899, said Circuit Court of Appeals filed its opinion and directed that the judgment of said Circuit Court be reversed with instructions to the Court below to render a judgment for the plaintiff for the amount due by the terms of the guaranty. A mandate in accordance with said opinion and instructions was issued and duly filed in said Circuit Court of the United States for the District of Connecticut, where said case is now pending, and said Court is about to proceed with the same in accordance with said mandate. A certified copy of the record in the said Circuit Court of Appeals is hereto attached, marked Exhibit "C."

8. On the agreed statement of facts and upon the issues joined in said cases in the Superior Court and Supreme Court of Errors of the State of Connecticut and in said Circuit Court of Appeals, it appeared that your petitioner, a married woman, married in 1857, and then and ever since having her domicil in said State, and at all times being under the disabilities of the common law, signed, at her said domicil, a paper intended as a guaranty for certain indebtedness then existing from the copartnership of Morse, Mitchell & Williams, of Chicago, Illinois, of which her husband was a member, to the respondent. This paper was, by her husband, sent, by mail, from Bristol, Connecticut, to Morse, one of his partners, at Chicago, and, by him, given to the respondent.

9. The Supreme Court of Errors of Connecticut held that the claimed guaranty was void, that your petitioner was incapable of making such a contract, at her domicil in Connecticut, that no action could be maintained against her on such contract in Connecticut, and that there was no rule of comity which required the courts of Connecticut to extend to a non-resident a

right of action against residents of the State, not permitted to its own citizens.

10. Said United States Court of Appeals held that the claimed guaranty was valid, and that your petitioner was liable thereon; that the case depended not upon the construction of the local law of the State of Connecticut, but upon the application of the principles of general jurisprudence, and that the action could be maintained in the Circuit Court of the United States for the District of Connecticut, notwithstanding the refusal of the courts of Connecticut to permit like action to be maintained in their jurisdiction, and although "it is, in a sense, unseemly that there should be diverse judgments under such circumstances between a federal court sitting in that State and the highest court of the State."

11. Your petitioner respectfully submits that not only the diverse judgments of the State and federal courts, and the uncertainty and confusion arising therefrom, but also the right of the State to determine the capacity or incapacity of its members to contract, and whether the validity of a claimed contract of an incapable married woman which was signed at her domicil is determined by the laws of the State of her domicil, and whether comity denied by State courts can be extended by federal courts in the State, involved in the case of your petitioner, should be authoritatively and finally adjudged by this Honorable Court, upon and after a full presentation of the merits of the said questions on the part of the petitioner and the respondent.

Wherefore, your petitioner respectfully prays that a writ of *certiorari* may be issued out of and under the seal of this court, directed to the United States Circuit Court of Appeals for the Second Circuit, commanding the said Court to certify and send to this Court, on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the said Circuit Court of Appeals in the said case therein, entitled The

First National Bank of Chicago, Plaintiff in Error *versus* H. Drusilla Mitchell, Defendant in Error; to the end that the said case may be reviewed and determined by this Court as provided in Section 6 of the Act of Congress entitled "An Act to Establish Circuit Courts of Appeals and to Define and Regulate in Certain Cases the Jurisdiction of the Courts of the United States and for Other Purposes," approved March 3, 1891, or that your petitioner may have such other or further relief or remedy in the premises as to this Court may seem appropriate and in conformity with said Act, and that said judgment of the said Circuit Court of Appeals in the said case, and every part thereof, may be reversed by this Honorable Court.

And your petitioners will ever pray, etc.

Dated this 24th day of April, 1899.

H. DRUSILLA MITCHELL,
By THEODORE M. MALTBIE,
Her Attorney.

THEODORE M. MALTBIE,
Of Counsel for Petitioner.

STATE OF CONNECTICUT, }
COUNTY OF HARTFORD, } ss. HARTFORD, APRIL 24, 1899.

Theodore M. Maltbie, being duly sworn, says that he is one of the attorneys and of counsel for Mrs. H. Drusilla Mitchell, the petitioner named in the foregoing petition, and appeared for and represented her in the case mentioned in said petition in the Circuit Court of Appeals for the Second Circuit;

And also that he was attorney for Edward A. Freeman, trustee, named in the foregoing petition, and appeared for and represented him in the case mentioned in said petition, being his Appeal from Doings of Commissioners on Estate of H. Drusilla

Mitchell in the Superior Court and Supreme Court of Errors of the State of Connecticut; that he has read the said petition, and that the facts therein stated are true.

THEODORE M. MALTBIE,

Sworn and subscribed before me, the 24th day of April, 1899.

HUGH M. ALCORN,

[SEAL.] *Notary Public.*

Exhibit "A."

To all persons to whom these presents shall come,— GREETING:

Know ye, that I, George A. Conant, clerk of the County of Hartford, and of the Superior Court of the State of Connecticut within and for said county, having inspected the files and records in said Superior Court in my custody, do find there remaining on file a certain record in a cause known and entitled as "Edward A. Freeman, Trustee, Appeal from the Doings of Commissioners on Estate of H. Drusilla Mitchell, Insolvent Debtor," in the words and figures following, to wit:

GEORGE A. CONANT,

[SEAL.] *Clerk.*

STATE OF CONNECTICUT, }
HARTFORD COUNTY. } ss.

At a Court of Probate holden at Bristol, within and for the District of Bristol, on the 30th day of September, A.D. 1896:

Present, Elbert E. Thorpe, Esq., Judge.

Estate of H. Drusilla Mitchell, insolvent debtor.

Edward A. Freeman of Plainville, in said county, as trustee of the estate of H. Drusilla Mitchell aforesaid, appears in court within one month next after the report of the commissioners on said estate is returned into said Court of Probate and accepted, and moves for an appeal to the Superior Court at Hartford, within and for the county of Hartford, on the first Tuesday of October, 1896, from the doings of said Commissioners, in allowing a claim in favor of First National Bank of Chicago, State

of Illinois, and finding the same fully secured, which said claim exceeds the sum of seventy dollars, viz.: $28,070.30.

Said motion for an appeal is allowed and granted by this Court.

And the said Edward A. Freeman as principal, and Adrian J. Muzzy of Bristol, Conn., as surety, acknowledge themselves jointly and severally to be indebted and bound to the State of Connecticut in the sum of one hundred dollars, conditioned that said appellant shall prosecute said appeal to effect and answer all damages in case he make not his plea good.

And it is ordered by this Court that notice of said appeal and of this order be given to said First National Bank by leaving a true and attested copy of said appeal and order with the attorneys and representatives in this State, of said bank, or by mailing a like copy, postage paid, addressed to said First National Bank at Chicago, Ill., by the sheriff of the county of Hartford, his deputy, or by either of the constables of the town of Bristol, or by any indifferent person, at least five days before above return day of said Superior Court. And return make to said Court.

Certified from record,

ELBERT E. THORPE,
Judge.

HARTFORD, September 30, 1896.

Service of the foregoing appeal from commissioners is hereby accepted and further service of the same is waived, and it is agreed that the same may be entered upon the docket of the Superior Court and proceeded with in the same manner as if the order of notice herein had been complied with.

FIRST NATIONAL BANK OF CHICAGO,
By CASE, BRYANT & CASE,
Attorneys.

EDWARD A. FREEMAN, TRUSTEE, APPEAL FROM DOINGS OF COMMISSIONERS ON ESTATE OF H. DRUILLA MITCHELL.	SUPERIOR COURT, HARTFORD COUNTY, November 10, 1896.

STATEMENT OF CLAIM.

1. The said H. Drusilla Mitchell, on the 20th day of February, 1891, executed and delivered to said First National Bank at Chicago an instrument in writing, of which a copy is hereto attached, marked Exhibit "A."

2. Thereafter, and relying upon said instrument, said bank extended credit to said Morse, Mitchell & Williams to the extent of $30,000, as evidenced by sundry notes, copies of which are hereto attached, marked respectively Exhibits "1," "2," "3," "4," "5," "6," "7," "8."

3. Said notes remain unpaid and are the property of said bank.

4. The amount of appellee's claim is $28,070.30, with interest thereon from the 17th day of June, 1896.

5. On June 17, 1896, and before the expiration of the time limited for the presentation of claims against said estate, the said claim was presented to said commissioners.

6. Said claim is secured by an assignment to said bank, from said Mitchell, of her interest in the estate of Elisha N. Welch, deceased.

FIRST NATIONAL BANK OF CHICAGO,
By CASE, BRYANT & CASE,
Its Attorneys.

HARTFORD, CONN., June 17, 1896.

Estate of H. Drusilla Mitchell,

E. A. Freeman, Trustee,

To the First National Bank of Chicago, Dr.

To amount of sundry notes guaranteed by H. Drusilla Mitchell (copies hereto attached), . .	$25,289.60
To interest on said notes from maturity of each to date, ...	4,738.34
	$30,027.94
Credit by sundry payments and interest thereon to date, ...	1,957.64
	$28,070.30

EXHIBIT 7.

$5,000.00 CHICAGO, April 1, 1893.

Four months after date we promise to pay to the order of The First National Bank of Chicago, Five Thousand Dollars at 100 State Street, Chicago, Ill. Value received.

F. E. MORSE & CO.

Indorsements:

Paid 5/29/95. $1,719.64. *Paid by Assignee.*

MORSE, MITCHELL & WILLIAMS.

EXHIBIT 1.

$3,000.00 CHICAGO, April 12, 1893.

Four months after date we promise to pay to the order of The First National Bank, Three Thousand Dollars at 34 and 36 Washington Street. Value received.

MORSE, MITCHELL & WILLIAMS.

EXHIBIT 2.

$5,000.00 CHICAGO, April 17, 1893.

Four months after date we promise to pay to the order of The First National Bank, Five Thousand Dollars at 34 and 36 Washington Street. Value received.

MORSE, MITCHELL & WILLIAMS.

EXHIBIT 3.

No. 87,773. $5,000.00

CHICAGO, ILL., May 16, 1893.

Four months after date we promise to pay to the order of The First National Bank of Chicago, Five Thousand Dollars with interest at seven per cent. per annum after due, at the office of said bank. Value received.

MORSE, MITCHELL & WILLIAMS.

Payable at 34 and 36 Washington Street, Venetian Bldg.

EXHIBIT 4.

$2,500 CHICAGO, June 10, 1893.

Four months after date we promise to pay to the order of First National Bank, Twenty Five Hundred Dollars at 34 Washington Street. Value received.

MORSE, MITCHELL & WILLIAMS.

Indorsed, F. E. Morse & Son.

EXHIBIT 6.

$289.60 CHICAGO, June 8, 1893.

Three months after date I promise to pay to the order of

Morse, Mitchell & Williams, Two Hundred Eighty Nine 60/100 Dollars at 34 Washington Street. Value received. 7 per cent. from date.

ELIZABETH EWING.

Indorsements:

Paid 10/5/93, $50.

" 12/5/93, 5.

" 8/8/95, 50.

Paid 10/31/93, $10.00

" 5/ 5/94, 10.00

MORSE, MITCHELL & WILLIAMS.

EXHIBIT 8.

$3,500 CHICAGO, June 10, 1893.

Four months after date we promise to pay to the order of The First National Bank of Chicago, Thirty-five Hundred Dollars at The First National Bank. Value received.

F. E. MORSE & SON.

Indorsed, Morse, Mitchell & Williams.

EXHIBIT 5.

CHICAGO, ILL., June 30, 1893.

Ninety days after date we promise to pay to the order of The First National Bank of Chicago, One Thousand Dollars, with interest at seven per cent. per annum after due, at the office of said Bank. Value received.

MORSE, MITCHELL & WILLIAMS.

EXHIBIT "A."

We hereby request the First National Bank of Chicago to give and continue, to Morse, Mitchell & Williams, credit as they may desire from time to time, and in consideration of any and all

such credit given, we hereby guarantee any and all indebtedness now due, or which may hereafter become due, from them to said bank, to the extent of thirty thousand dollars, and waive notice of the acceptance of this guaranty, and of any and all indebtedness at any time covered by the same. This guaranty shall continue until written notice from us of the discontinuance thereof shall be received by said The First National Bank of Chicago.

Chicago, Ill., February 20, 1891.

MORSE, MITCHELL & WILLIAMS,
FRANCIS E. MORSE,
FREDERICK C. WILLIAMS,
G. H. MITCHELL,
H. DRUSILLA MITCHELL.

Filed November 10, 1896.

GEORGE A. CONANT,
Assistant Clerk.

EDWARD A. FREEMAN, TRUSTEE, APPEAL FROM DOINGS OF COMMISSIONERS ON ESTATE OF H. DRUSILLA MITCHELL. } HARTFORD COUNTY, SUPERIOR COURT, November 11, 1896.

ANSWER TO CLAIM OF FIRST NATIONAL BANK OF CHICAGO.

1. Paragraph 1 is denied. Said writing, Exhibit "A," was prepared by said bank at said Chicago and there signed by the members of the copartnership of Morse, Mitchell & Williams; and, thereafter, pursuant to an agreement between said bank and said copartnership, said writing was taken by their agent to the domicil of said H. Drusilla Mitchell, at Bristol, in this State, who, being solicited so to do, there signed said writing,

and then and there delivered the same to the agent of said bank and copartnership, who transmitted it, by mail, to said Chicago.

2. Said H. Drusilla Mitchell, at the time of signing said writing, was a married woman, the wife of George H. Mitchell of said Bristol, to whom she was married in 1857, at said Bristol, where she then, and ever since has, resided.

3. At the date of said writing, said Morse, Mitchell & Williams was indebted and otherwise liable to said bank in a large sum, to wit: $25,000 and more; and said bank did not, thereafter, give other or further credit to said copartnership. Paragraph 2 is denied.

4. The appellant has not sufficient information to form a belief as to paragraph 3. Paragraphs 4 and 6 are denied, and paragraph 5 is admitted.

EDWARD A. FREEMAN, TRUSTEE,
By T. M. MALTBIE,
His Attorney.

Filed November 13, 1896,
GEORGE A. CONANT,
Assistant Clerk.

EDWARD A. FREEMAN, TRUSTEE, APPEAL FROM DOINGS OF COMMISSIONERS ON ESTATE OF H. DRUSILLA MITCHELL. } HARTFORD COUNTY, SUPERIOR COURT, December 15, 1896.

REPLY OF FIRST NATIONAL BANK OF CHICAGO TO DEFENDANT'S ANSWER.

1. Paragraph 2 is admitted.

2. All other allegations of fact in said answer are denied.

FIRST NATIONAL BANK OF CHICAGO,

By CASE, BRYANT & CASE,

Its Attorneys.

Filed December 16, 1896.

GEORGE A. CONANT,

Assistant Clerk.

EDWARD A. FREEMAN, TRUSTEE, APPEAL FROM DOINGS OF COMMISSIONERS, ESTATE OF H. DRUSILLA MITCHELL, INSOLVENT DEBTOR.	SUPERIOR COURT, HARTFORD COUNTY, December 16, 1896.

RESERVATION.

In the above case all the parties consent that the same may be reserved for the advice of the Supreme Court of Errors as to the judgment to be therein rendered, and request this Court to so reserve said case upon the issues joined and the agreed facts.

FIRST NATIONAL BANK OF CHICAGO,

By CASE, BRYANT & CASE,

Attorneys.

Edward A. Freeman, Trustee,

By T. M. MALTBIE,

Attorney.

Filed December 16, 1896.

GEORGE A. CONANT,

Assistant Clerk.

EDWARD A. FREEMAN, TRUSTEE, APPEAL FROM DOINGS OF COMMISSIONERS, ESTATE OF H. DRUSILLA MITCHELL, INSOLVENT DEBTOR.	SUPERIOR COURT, HARTFORD COUNTY, December 17, 1896.

FINDING OF FACTS.

1. The appellant is trustee of the assigned estate of said H. Drusilla Mitchell, duly appointed and qualified in the Court of Probate for the District of Bristol.

2. Said bank is organized under the laws of the United States and engaged in the business of banking at Chicago, in the State of Illinois.

3. Said H. Drusilla Mitchell was born and has always resided in Bristol, State of Connecticut. She was married there in 1857, to George H. Mitchell, and, with her said husband, established a home at Forestville, in said Bristol, where they resided until his death, which occurred March 6, 1896, and where she now resides.

4. Said George H. Mitchell was a member of the firm of Morse, Mitchell & Williams, a copartnership located at said Chicago, engaged in mercantile and real estate business. The other members of said firm were Francis E. Morse and Frederick C. Williams, both of said Chicago.

5. Said Morse, Mitchell & Williams kept an account and did business with said First National Bank; and on the 20th day of February, 1891, were largely indebted to said bank, viz.: in the sum of twenty thousand dollars ($20,000.00) or more, as evidenced by their notes payable to said bank, which have been renewed, in part, from time to time, as stated in paragraph 9.

6. On said February 20, 1891, said firm, and said Morse, Williams, and George H. Mitchell executed to said bank, at Chicago, the paper, a copy of which is hereto annexed, marked "A." Said paper was prepared by said bank which had agreed with said firm to continue the line of credits to it upon the execution of said paper by said firm and its individual members and by Mrs. H. Drusilla Mitchell, then at her home in said Bristol.

7. Said George H. Mitchell thereupon took said paper and brought it with him to his residence at said Forestville, and there procured his said wife, H. Drusilla Mitchell, to sign the same, and the same was thereafter by him enclosed, addressed, and sent by mail, to said Morse in Chicago, who delivered said paper to said bank.

8. Said bank continued to extend credit to said Morse, Mitchell & Williams until said firm became insolvent and made an assignment for the benefit of its creditors on July 30, 1893.

9. At the time of such insolvency and assignment, said bank held and owned the notes of said Morse, Mitchell & Williams, renewals of unpaid portions of said first mentioned notes for the sum of sixteen thousand, five hundred dollars ($16,500.00), copies of which renewal notes, marked respectively "1," "2," "3," "4," "5," are hereto attached. Also note made by Elizabeth Ewing, two hundred, eighty-nine dollars, and sixty cents ($289.60), endorsed by Morse, Mitchell & Williams, copy attached, marked "6." All the above notes are still owned by said bank and are unpaid.

10. Said bank also held and owned notes made by F. E. Morse & Son, another business firm of said Chicago, said F. E. Morse being the above-named Francis E. Morse, for the sum of eighty-five hundred dollars ($8,500.00), which notes were endorsed by said Morse, Mitchell & Williams and discounted for

the benefit of said Morse & Son by said bank, copies of said notes, marked "7" and "8," are hereto attached. Said F. E. Morse & Son became insolvent and made an assignment for the benefit of their creditors, and said notes were presented as a claim against the estate of said F. E. Morse & Son; and on May 27, 1895, said bank was paid seventeen hundred, nineteen dollars and sixty-four cents ($1,719.64), as a dividend upon said notes. No further payment has been made on said notes. Notice of non-payment of said notes was not given to said endorsers unless constructive notice may be found upon the foregoing facts.

11. Said bank, December 26, 1893, prepared the letter addressed to J. H. Welch, Esq., executor of the will of E. N. Welch, deceased, copy of which is annexed hereto, marked "B," which letter was sent to said George H. Mitchell at Forestville, Conn., by said bank, to procure the signature of his wife, said H. Drusilla Mitchell, thereto. Said George H. Mitchell procured said H. Drusilla Mitchell to sign said letter at her home in said Bristol and transmitted the same, by mail, to said bank at Chicago on January 23, 1894. Said H. Drusilla Mitchell executed no other paper or assignment to said bank of her interest in the estate of E. N. Welch, deceased. Upon the receipt of said letter by said bank, said bank executed and transmitted to George H. Mitchell, by mail, the receipt, copy of which is attached, marked "C"; but the same was never delivered by said George H. Mitchell to said H. Drusilla Mitchell, or its existence made known to her until after his death.

12. The printed statutes, and the decisions of courts of last resort, of the State of Illinois, are referred to and made a part hereof as showing the existing law of said State at the time of said several transactions.

13. Said claim was duly presented to the commissioners on the insolvent estate of said H. Drusilla Mitchell and by them allowed at the sum of $28,070.30, and the security therefor was by them found to be equal in value to said amount.

Upon the foregoing facts, by consent of all the parties to the record, said appeal is reserved for the advice of the Supreme Court of Errors next to be held at Hartford, in the First Judicial District, on the first Tuesday in January, 1897.

GEORGE W. WHEELER,
Judge.

EXHIBIT "A."

We hereby request the First National Bank of Chicago to give and continue to Morse, Mitchell & Williams credit as they may desire from time to time, and in consideration of all and any such credit given we hereby guarantee any and all indebtedness now due, or which may hereafter become due, from them to said bank, to the extent of thirty thousand dollars, and waive notice of the acceptance of this guaranty and of any and all indebtedness at any time covered by the same. This guaranty shall continue until written notice from us of the discontinuance thereof shall be received by said The First National Bank of Chicago.

MORSE, MITCHELL & WILLIAMS,
FRANCIS E. MORSE,
FREDERICK C. WILLIAMS,
G. H. MITCHELL,
H. DRUSILLA MITCHELL.

Chicago, Ill., February 20, 1891.

EXHIBIT "1."

$3,000 CHICAGO, April 12, 1893.

Four months after date we promise to pay to the order of the First National Bank, three thousand dollars at 34 and 36 Washington Street. Value received.

MORSE, MITCHELL & WILLIAMS.

EXHIBIT "2."

$5,000. CHICAGO, April 17, 1893.

Four months after date we promise to pay to the order of the First National Bank, five thousand dollars at 34 and 36 Washington Street. Value received.

MORSE, MITCHELL & WILLIAMS.

EXHIBIT "3."

No. 87,773.

$5,000. CHICAGO, ILL., May 16, 1893.

Four months after date we promise to pay to the order of the First National Bank of Chicago, five thousand dollars, with interest at seven per cent. per annum after due at the office of said bank. Value received.

MORSE, MITCHELL & WILLIAMS.

Payable at 34 and 36 Washington Street, Venetian Bldg.

EXHIBIT "4."

$2,500. CHICAGO, June 10, 1893.

Four months after date we promise to pay to the order of First National Bank, twenty-five hundred dollars at 34 Washington Street. Value received.

MORSE, MITCHELL & WILLIAMS.

Indorsed, F. E. Morse & Son.

EXHIBIT "5."

No. 92,099.

$1,000. CHICAGO, ILL., June 30, 1893.

Ninety days after date we promise to pay to the order of the First National Bank of Chicago, one thousand dollars, with

interest at seven per cent. per annum after due, at the office of said bank. Value received.

MORSE, MITCHELL & WILLIAMS.

EXHIBIT "6."

$289.60. CHICAGO, June 8, 1893.

Three months after date I promise to pay to the order of Morse, Mitchell & Williams, two hundred, eighty-nine dollars, and sixty cents at 34 Washington Street. Value received. Seven per cent. from date.

ELIZABETH EWING.

Indorsed, Paid 10/ 5/93, $50.00
" 10/31/93, 10.00
" 12/ 5/93, 5.00
" 5/ 5/94, 10.00
" 8/ 8/95, 50.00

MORSE, MITCHELL & WILLIAMS.

EXHIBIT "7."

$5,000. CHICAGO, April 1, 1893.

Four months after date we promise to pay to the order of the First National Bank of Chicago, five thousand dollars at 100 State Street, Chicago, Ill. Value received.

F. E. MORSE & SON.

Indorsed, Paid 5/27/95, $1,719.64. Paid by assignee.

MORSE, MITCHELL & WILLIAMS.

EXHIBIT "S."

$3,500. CHICAGO, June 10, 1893.

Four months after date we promise to pay to the order of the First National Bank of Chicago, thirty-five hundred dollars at the First National Bank. Value received.

F. E. MORSE & SON.

Indorsed, Morse, Mitchell & Williams.

EXHIBIT "B."

CHICAGO, ILL., December 26, 1893.

J. H. WELCH, Esq.,
Executor of the will of E. N. Welch, deceased,
Forestville, Conn.

DEAR SIR: — I desire to notify you that I have assigned, set over, and transferred to the First National Bank of Chicago, Ill., all my right, title, and interest in and to so much of the estate of my late father, E. N. Welch, deceased, as has not been distributed, and you will, therefore, account for and pay over to said First National Bank of Chicago, instead of to me, all money and other property coming to me or to which I may be entitled, at any time hereafter, from said estate of my deceased father.

Please note at the foot hereof, for the satisfaction and security of said bank, that you will undertake to do this, and in case you should cease to be executor of the estate, otherwise than by death, you would promptly give notice of the fact to said bank, in order that it might give express notice of this assignment to your successor in the trust.

Yours truly,

H. DRUSILLA MITCHELL.

I take notice of the foregoing and will comply therewith.

J. H. WELCH,
Executor.

EXHIBIT "G."

December 26, 1893.

Received of H. Drusilla Mitchell an assignment of all her right, title, and interest in the undistributed estate of her late father, E. N. Welch, deceased, the same being so received in pledge to secure the payment of her indebtedness to the undersigned, its successors or assigns, upon her guaranty of certain notes made or endorsed by Morse, Mitchell & Williams of Chicago, amounting to $26,000, more or less.

In consideration of security pledged as aforesaid, the undersigned undertakes and promises to surrender and reassign the same, or so much thereof as shall not have been applied on said indebtedness, at any time on demand after payment in full of the indebtedness aforesaid, and not to enforce or demand payment of said indebtedness from said H. Drusilla Mitchell, her heirs, executors, or administrators prior to January 1, 1895, except from the interest or property assigned as security aforesaid.

THE FIRST NATIONAL BANK OF CHICAGO,
By L. J. Gage, *Pl.*

Filed and granted December 17, 1896.
George A. Conant,
Assistant Clerk.

Edward A. Freeman, Trustee, Appeal from Doings of Commissioners, Estate of H. Drusilla Mitchell.	Superior Court, Hartford County, December 17, 1896.

RESERVATION.

The above-entitled case, by consent and at the request of all the parties to the record, is reserved for the advice of the Supreme Court of Errors upon the issues joined and facts agreed and stipulated by the parties.

GEORGE W. WHEELER,
Judge.

Edward A. Freeman, Trustee, Appeal from Doings of Commissioners on Estate of H. Drusilla Mitchell.

(Argued January 13th — Decided February 23, 1897.)

Baldwin, *J.* Mrs. Mitchell, being a citizen of Connecticut, married a citizen of Connecticut in 1857, and they continued to reside in this State until his death. Her marriage gave her, under the laws of the State then in force, substantially the *status* which belonged to a married woman at common law. Her personal identity from a judicial point of view was merged in that of her husband. Thereafter, during coverture, she could make no contract that would be binding upon her, even by his express authority. 1 Swift's Dig., 30. If she assumed to make such a contract, it was absolutely void.

These personal disabilities the common law imposed partly for the protection of the husband, and partly for that of the wife. To preserve what property rights remained to her, as far as might be, against his creditors, various statutes were from time to time enacted, until this long ago became recognized as the established policy of the State. Jackson v. Hubbard, 36 Conn., 10, 15. These statutes were mainly designed to protect her against others. The common law was sufficient to protect her against herself, and prior to 1877 it precluded her from making any contract as surety for her husband. Kilbourn v. Brown, 56 Conn., 149. A statute of that year establishes a different rule for women married after its enactment, but does not enlarge the rights of those previously married. General Statutes, Sec. 2796.

Whenever a peculiar *status* is assigned by law to the members of any particular class of persons, affecting their general position in or with regard to the rest of the community, no one belonging to such class can vary by any contract the rights and liabilities incident to this *status*. Anson's Principles of Contract, 328. If he could, his private agreements would outweigh the law of the land. *Jus publicum privatorum pactis mutari non potest.*

Coverture constitutes such a *status*, and one of its incidents in this State, at the time of Mrs. Mitchell's marriage, was a total disability to contract. So far as contracts of suretyship for their husbands are concerned, the disability of women married before 1877 remains absolute, unless both husband and wife have executed for public record a written contract, by which both accede to the provisions of the statute of that year and accept the rights which it offers to them. General Statutes, Sec. 2798. No such contract was ever executed by Mrs. Mitchell.

The claim in favor of the First National Bank of Chicago which has been allowed by the commissioners on her estate was founded on a debt due from a mercantile firm in Illinois, of which her husband was a member, for which she had assumed to make herself responsible, as guarantor, by a writing dated in Illinois, but signed in this State. The creditor had agreed, in Illinois, with the firm to forbear suit if she and they (as a firm and individually) would become parties to such a paper; and, after they had signed it there, had given it to her husband, in Illinois, to take to her, in this State, for execution. He procured her signature, and then mailed the instrument to one of his partners at Chicago, by whom it was there delivered to the bank. The agreement of forbearance had been conditioned on the execution of the guaranty by the firm, its individual members, and Mrs. Mitchell. It was her credit only that was to give it value. Its execution by the others gave the bank nothing which it did not have, as fully, before. It did not become complete until it received her signature. It did not then become operative as a security until it had been delivered to the creditor.

Her husband cannot be deemed to have acted, in procuring Mrs. Mitchell's signature, as the agent of the bank. No finding to that effect was made by the trial court, and no such agency is implied from the circumstances of the transaction. He had a direct interest in obtaining the desired extension of credit. He was a principal in the obligation. He sent the paper, as soon as

it was completed, not to the bank, but to another of the principals. If he represented anyone but himself, it was his copartner. The delivery of the paper by his wife to him, therefore, after her signature had been attached, was not a delivery to the bank, but simply purported to give him authority as her agent to make or procure such a delivery at some subsequent time.

If, therefore, the guaranty, so far as concerns her obligation upon it, was ever delivered, it was delivered, and so first took effect in Chicago. But its delivery there could not affect her, unless it was made by her or by her authorized agent. Morse, the partner who actually handed it to the bank, stood in no better position than her husband, whether regarded as the servant of the latter, or as a partner with him. In either case, the agency, by virtue of which the delivery was made, was created, if at all, in Connecticut.

But to create an agency is to enter into a contractual relation. Mrs. Mitchell had no capacity to make any contract whereby her legal position in respect to all or any of the other members of the community would be varied. It would have varied it in respect to her husband, could she have constituted him her agent to put her, by delivery of an instrument of guaranty, in the situation of a surety for his debt to a third party. He therefore derived no authority from her to make the delivery to the bank, and, as to her, the instrument never was delivered.

It is true that the guaranty, if a binding contract, was a contract made in Illinois. It might also be assumed, so far as concerns the law of this case (although this is a point as to which we express no opinion), that it was one to be performed in Illinois, and that as to the principals in the transaction it was fully an Illinois contract, and to be governed by the law of Illinois, as respects any question as to its validity. By that law a married woman was free to enter into such an engagement, and to consti-

tute an agent for that purpose. But the *lex loci contractus* is a rule of decision only when there is a contract, so made as to be subject to that law. It is a *petitio principii* to say that because the guaranty was delivered in Chicago it is therefore to be held effectual or ineffectual, as against Mrs. Mitchell, by the law of that place. The underlying question is, was it, as to her, ever delivered at all? It was not so delivered unless delivered by her authority; and by the laws of Connecticut, where she assumed to give such authority, she could not give it. Cooper v. Cooper, L. R., 13 App., Cases 88, 99, 100; Story on the Conflict of Laws, Secs. 64, 65, 66a, 136; Dicey on the Conflict of Laws, Chap. XVIII, rule 123.

Had Mrs. Mitchell been within the State of Illinois when she signed the guaranty it may be that her personal presence would have so far made her a resident of that State as to subject her to its laws, in respect to acts done within its jurisdiction. But as whatever was done in Illinois to bind her to the bank was done under an agency constituted in Connecticut, it is the law of Connecticut which must determine as to the authority of the agent, and so as to the validity of the obligation which he, as such, undertook to impose upon her by the delivery in Chicago of the paper signed by her in Bristol.

The order drawn by Mrs. Mitchell on the executor of her father's will, directing him to pay over to the bank whatever might otherwise be coming to her as a part of the estate in his hands, though dated at Chicago, was brought to her in behalf of the bank in Connecticut, signed and given back to the agent of the bank in Connecticut, accepted by the executor in Connecticut, and then mailed in Connecticut by its agent to the bank at Chicago. The whole transaction, therefore, was completed here. The order became operative, if at all, to transfer her interest in her father's estate, when the executor had notice of it, and agreed to comply with it by handing his written acceptance to the agent of the bank. That Mr. Mitchell was acting in that capacity

seems clear from the finding that the bank, after the firm had become insolvent and made an assignment for the benefit of its creditors, prepared the paper and sent it to him, to procure her signature to it. No assignment which she could make would benefit the firm. If its result was to satisfy the claim of the bank, she would be subrogated to its place, and their creditors would receive no greater dividend. The order, also, was for the payment of a share in the estate of a deceased citizen of Connecticut, in the course of settlement in its courts. Under these circumstances, its validity must be determined by the laws of Connecticut, and being dependent on the contractual act of a married woman, not for the benefit of herself, her family, or her estate, it was void.

There have been cases not differing essentially in principle from that at bar, in which courts, to whose opinions great consideration is due, have come to conclusions varying from those which we have reached. The leading one is Miliken v. Pratt, 125 Mass., 374. There a guaranty by a married woman of such debts as her husband might thereafter contract was signed in Massachusetts, delivered there by her to him, and by him there mailed to the other party in Maine. The Court held that the contract became complete when the guaranty was received and acted upon by the latter, and not before; and enforced it as one made and to be performed in Maine, where married women then had power to enter into such agreements. No reference was made to the fact (which may, perhaps, have been immaterial under the laws of Massachusetts) that the delivery was made by the husband, acting as the agent of the wife,— a fact which, in our view, under the common law of Connecticut, is of controlling importance.

Engagements which coverture prevents a woman from making herself she cannot make through the interposition of an agent, whom she assumes to constitute as such in the State of her domicil. If this were not so, the law could always be evaded

by her appointment of an attorney to act for her in the execution of contracts. No principle of comity can require a State to lend the aid of its courts to enforce a security which rests on a transgression of its own laws by one of its own citizens, committed within its own territory. Such was, in effect, the act by which Mrs. Mitchell undertook to do what she had no legal capacity to do, by making her husband the agent to deliver the guaranty to the bank. He had no more power to make it operative by delivery in Chicago to one of his creditors in Illinois than he would have had to make it operative here had it been drawn in favor of one of his creditors in Connecticut. It is not the place of delivery that controls, but the power of delivery.

The Superior Court is advised to disallow all and every part of the claim of the First National Bank.

In this opinion the other judges concurred.

8521.

EDWARD A. FREEMAN, Trustee,
Appeal from Doings of Commissioners on Estate of
H. DRUSILLA MITCHELL.
Opinion of Supreme Court
of Errors.

Filed February 25, 1897.

GEORGE A. CONANT,
Assistant Clerk.

At a Superior Court holden at Hartford, in and for the County of Hartford, in the State of Connecticut, on the second Tues-

day of October, in the year of our Lord one thousand eight hundred and ninety-six:

Present, Hon. Frederic B. Hall, Judge.

8521.

EDWARD A. FREEMAN, TRUSTEE, APPEAL FROM DOINGS OF COMMISSIONERS, ON ESTATE OF H. DRUSILLA MITCHELL AN INSOLVENT DEBTOR.	HARTFORD COUNTY, SUPERIOR COURT, March 2, 1897.

JUDGMENT.

This appeal from the doings of the commissioners on the estate of H. Drusilla Mitchell, an insolvent debtor, in allowing the claims of the First National Bank of Chicago against said estate for $28,070.30, and finding that the same was fully secured, came to this court on the first Tuesday of October, 1896, when the parties appeared and were at issue to the court, as on file.

This Court heard the parties, and with their consent, in writing, reserved said appeal for the advice of the Supreme Court of Errors as to the judgment to be rendered.

The Supreme Court of Errors advised this Court to disallow all the claims of said First National Bank of Chicago against said estate.

Whereupon it is adjudged that all the claims of said First National Bank of Chicago against said estate of H. Drusilla Mitchell, insolvent debtor, be and the same are, disallowed; and that the said appellant, Edward A. Freeman, trustee, recover from said First National Bank of Chicago his costs, taxed and allowed at eighty-six dollars.

By the Court,

GEORGE A. CONANT,
Assistant Clerk.

All of which I have caused by these presents to be exemplified and the seal of the Superior Court of the State of Connecticut in and for the County of Hartford to be hereunto affixed, and do hereby certify that the within and foregoing is a true copy of said original files and record.

In testimony whereof I hereunto set my hand and affix the seal of said Superior Court, at Hartford, in said county and State, this sixteenth day of March, A.D. 1899.

GEORGE A. CONANT,

Clerk of the Superior Court of the State of Connecticut in and for the County of Hartford.

[SEAL.]

STATE OF CONNECTICUT, } ss.
COUNTY OF HARTFORD, }

I, John M. Thayer, a Judge of the Superior Court of the State of Connecticut, do hereby certify that George A. Conant, whose name is subscribed to the foregoing exemplification, is the Clerk of said Superior Court in and for said Hartford County, duly appointed and sworn, that the above is his genuine official signature, and that full faith and credit are due to his official act. I further certify that the seal affixed to said exemplification is the seal of the Superior Court of said State in and for said Hartford County, and that the foregoing attestation is in due form.

Dated at Hartford, this 16th day of March, A.D. 1899.

JOHN M. THAYER,
A Judge of the Superior Court of the State of Connecticut.

Exhibit "B."

To all persons to whom these presents shall come,— GREETING:

Know Ye, That I, George A. Conant, Clerk of the Supreme Court of Errors of the State of Connecticut, First Judicial District, in and for the County of Hartford in said State, having inspected the files and records in said court in my custody, do find there remaining on file a certain record in a cause known and entitled as "Edward A. Freeman, Trustee, Appeal from the Doings of Commissioners on Estate of H. Drusilla Mitchell, Insolvent Debtor," in the words and figures following, to wit:

GEORGE A. CONANT,
Clerk of the Supreme Court of Errors for the
[SEAL.] First Judicial District, County of Hartford,
State of Connecticut.

EDWARD A. FREEMAN, TRUSTEE, APPEAL FROM DOINGS OF COMMISSIONERS ON ESTATE OF H. DRUSILLA MITCHELL, INSOLVENT DEBTOR. } SUPREME COURT OF ERRORS, FIRST JUDICIAL DISTRICT, January Term, 1897. RESERVATION.

SUPERIOR COURT, HARTFORD COUNTY.

First Tuesday of October, 1896.

STATE OF CONNECTICUT, HARTFORD COUNTY. } ss.

At a Court of Probate holden at Bristol, within and for the Dis-

trict of Bristol, on the 30th day of September, A.D. 1896:

Present, Elbert E. Thorpe, Esq., Judge.

Estate of H. Drusilla Mitchell, insolvent debtor.

Edward A. Freeman of Plainville, in said county, as trustee of the estate of H. Drusilla Mitchell aforesaid, appears in court within one month next after the report of the commissioners on said estate is returned into said Court of Probate, and accepted and moves for an appeal to the Superior Court at Hartford, within and for the county of Hartford, on the first Tuesday of October, 1896, from the doings of said commissioners, in allowing a claim in favor of First National Bank of Chicago, State of Illinois, and finding the same fully secured, which said claim exceeds the sum of seventy dollars, viz.: $28,070.30.

Said motion for an appeal is allowed and granted by this Court.

And the said Edward A. Freeman as principal, and Adrian J. Muzzy of Bristol, Conn., as surety, acknowledge themselves jointly and severally to be indebted and bound to the State of Connecticut in the sum of one hundred dollars, conditioned that said appellant shall prosecute said appeal to effect and answer all damages in case he make not his plea good.

And it is ordered by this Court that notice of said appeal and of this order be given to said First National Bank by leaving a true and attested copy of said appeal and order with the attorneys and representatives in this State, of said bank, or by mailing a like copy, postage paid, addressed to said First National Bank at Chicago, Ill., by the sheriff of the county of Hartford, his deputy, or by either of the constables of the town of Bristol, or by any indifferent person, at least five days before above return day of said Superior Court. And return make to said Court.

Certified from record,

ELBERT E. THORPE,

Judge.

Hartford, September 30, 1896.

Service of the foregoing appeal from commissioners is hereby accepted and further service of the same is waived, and it is agreed that the same may be entered upon the docket of the Superior Court and proceeded with in the same manner as if the order of notice herein had been complied with.

FIRST NATIONAL BANK OF CHICAGO,

By CASE, BRYANT & CASE,
Attorneys.

EDWARD A. FREEMAN, TRUSTEE, APPEAL FROM DOINGS OF COMMISSIONERS ON ESTATE OF H. DRUSILLA MITCHELL.

SUPERIOR COURT, HARTFORD COUNTY, November, 10, 1896.

STATEMENT OF CLAIM.

1. The said H. Drusilla Mitchell, on the 20th day of February, 1891, executed and delivered to said First National Bank at Chicago an instrument in writing, of which a copy is hereto attached, marked Exhibit "A."

2. Thereafter, and relying upon said instrument, said bank extended credit to said Morse, Mitchell & Williams to the extent of $30,000, as evidenced by sundry notes, copies of which are hereto attached, marked respectively Exhibits "1," "2," "3," "4," "5," "6," "7," "8."

3. Said notes remain unpaid and are the property of said bank.

4. The amount of appellee's claim is $28,070.30, with interest thereon from the 17th day of June, 1896.

5. On June 17, 1896, and before the expiration of the time

limited for the presentation of claims against said estate, the said claim was presented to said commissioners.

6. Said claim is secured by an assignment to said bank, from said Mitchell, of her interest in the estate of Elisha N. Welch, deceased.

FIRST NATIONAL BANK OF CHICAGO,

By CASE, BRYANT & CASE,

Its Attorneys.

HARTFORD, CONN., June 17, 1896.

Estate of H. Drusilla Mitchell,

E. A. Freeman, Trustee, &

To the First National Bank of Chicago, Dr.

To amount of sundry notes guaranteed by H. Drusilla Mitchell (copies hereto attached), . .	$25,289.60
To interest on said notes from maturity of each to date, ...	4,738.34
	$30,027.94
Credit by sundry payments and interest thereon to date, ...	1,957.64
	$28,070.30

Exhibits "1," "2," "3," "4," "5," "6," "7," and "8" annexed to Statement of Claim, are identical with Exhibits "1," "2," "3," "4," "5," "6," "7," and "8" annexed to Finding, page 6, of this record.

EXHIBIT "A."

We hereby request the First National Bank of Chicago to give and continue to Morse, Mitchell & Williams credit as they

may desire from time to time, and in consideration of any and all such credit given, we hereby guarantee any and all indebtedness now due, or which may hereafter become due, from them to said bank, to the extent of thirty thousand dollars, and waive notice of the acceptance of this guaranty, and of any and all indebtedness at any time covered by the same. This guaranty shall continue until written notice from us of the discontinuance thereof shall be received by said The First National Bank of Chicago.

Chicago, Ill., February 20, 1891.

MORSE, MITCHELL & WILLIAMS,
FRANCIS E. MORSE,
FREDERICK C. WILLIAMS,
G. H. MITCHELL,
H. DRUSILLA MITCHELL.

Filed November 10, 1896.

GEORGE A. CONANT,
Assistant Clerk.

EDWARD A. FREEMAN, TRUSTEE, APPEAL FROM DOINGS OF COMMISSIONERS ON ESTATE OF H. DRUSILLA MITCHELL.

HARTFORD COUNTY, SUPERIOR COURT, November 11, 1896.

ANSWER TO CLAIM OF FIRST NATIONAL BANK OF CHICAGO.

1. Paragraph 1 is denied. Said writing, Exhibit "A," was prepared by said bank at said Chicago and there signed by the members of the copartnership of Morse, Mitchell & Williams; and, thereafter, pursuant to an agreement between said bank and said copartnership, said writing was taken by their agent to the domicil of said H. Drusilla Mitchell, at Bristol, in this State, who,

being solicited so to do, there signed said writing, and then and there delivered the same to the agent of said bank and copartnership, who transmitted it, by mail, to said Chicago.

2. Said H. Drusilla Mitchell, at the time of signing said writing, was a married woman, the wife of George H. Mitchell of said Bristol, to whom she was married in 1857, at said Bristol, where she then, and ever since has, resided.

3. At the date of said writing, said Morse, Mitchell & Williams was indebted and otherwise liable to said bank in a large sum, to wit: $25,000.00 and more; and said bank did not, thereafter, give other or further credit to said copartnership. Paragraph 2 is denied.

4. The appellant has not sufficient information to form a belief as to paragraph 3. Paragraphs 4 and 6 are denied, and paragraph 5 is admitted.

EDWARD A. FREEMAN, TRUSTEE,
By T. M. MALTBIE,
His Attorney.

Filed November 13, 1896.
GEORGE A. CONANT,
Assistant Clerk.

EDWARD A. FREEMAN, TRUSTEE, APPEAL FROM DOINGS OF COMMISSIONERS ON ESTATE OF H. DRUSILLA MITCHELL.

HARTFORD COUNTY, SUPERIOR COURT, December 15, 1896.

REPLY OF FIRST NATIONAL BANK OF CHICAGO TO DEFENDANT'S ANSWER.

1. Paragraph 2 is admitted.

2. All other allegations of fact in said answer are denied.

FIRST NATIONAL BANK OF CHICAGO,
By CASE, BRYANT & CASE,
Its Attorneys.

Filed December 16, 1896.
GEORGE A. CONANT,
Assistant Clerk.

EDWARD A. FREEMAN, TRUSTEE, APPEAL FROM DOINGS OF COMMISSIONERS, ESTATE OF H. DRUSILLA MITCHELL, INSOLVENT DEBTOR.	SUPERIOR COURT, HARTFORD COUNTY, December 16, 1896.

RESERVATION.

In the above case all the parties consent that the same may be reserved for the advice of the Supreme Court of Errors as to the judgment to be therein rendered, and request this Court to so reserve said case upon the issues joined and the agreed facts.

FIRST NATIONAL BANK OF CHICAGO,
By CASE, BRYANT & CASE,
Attorneys.

EDWARD A. FREEMAN, Trustee,
By T. M. MALTBIE,
Attorney.

Filed December 16, 1896.
GEORGE A. CONANT,
Assistant Clerk.

EDWARD A. FREEMAN, TRUSTEE, APPEAL FROM DOINGS OF COMMISSIONERS, ESTATE OF H. DRUSILLA MITCHELL, INSOLVENT DEBTOR.	SUPERIOR COURT, HARTFORD COUNTY, December 17, 1896.

FINDING OF FACTS.

1. The appellant is trustee of the assigned estate of said H. Drusilla Mitchell, duly appointed and qualified in the Court of Probate for the District of Bristol.

2. Said bank is organized under the laws of the United States and engaged in the business of banking at Chicago, in the State of Illinois.

3. Said H. Drusilla Mitchell was born and has always resided in Bristol, State of Connecticut. She was married there in 1857, to George H. Mitchell, and, with her said husband, established a home at Forestville, in said Bristol, where they resided until his death, which occurred March 6, 1896, and where she now resides.

4. Said George H. Mitchell was a member of the firm of Morse, Mitchell & Williams, a copartnership located at said Chicago, engaged in mercantile and real estate business. The other members of said firm were Francis E. Morse and Frederick C. Williams, both of said Chicago.

5. Said Morse, Mitchell & Williams kept an account and did business with said First National Bank; and on the 20th day of February, 1891, were largely indebted to said bank, viz.: in the sum of twenty thousand dollars ($20,000.00) or more, as evidenced by their notes payable to said bank, which have been renewed, in part, from time to time, as stated in paragraph 9.

6. On said February 20, 1891, said firm, and said Morse, Williams, and George H. Mitchell executed to said bank, at Chicago, the paper, a copy of which is hereto annexed, marked "A." Said paper was prepared by said bank which had agreed with said firm to continue the line of credits to it upon the execution of said paper by said firm and its individual members, and by Mrs. H. Drusilla Mitchell, then at her home in said Bristol.

7. Said George H. Mitchell thereupon took said paper and brought it with him to his residence at said Forestville, and there procured his said wife, H. Drusilla Mitchell, to sign the same, and the same was thereafter by him enclosed, addressed, and sent by mail to said Morse in Chicago, who delivered said paper to said bank.

8. Said bank continued to extend credit to said Morse, Mitchell & Williams until said firm became insolvent and made an assignment for the benefit of its creditors on July 30, 1893.

9. At the time of such insolvency and assignment, said bank held and owned the notes of said Morse, Mitchell & Williams, renewals of unpaid portions of said first mentioned notes for the sum of sixteen thousand, five hundred dollars ($16,500.00), copies of which renewal notes, marked respectively "1," "2," "3," "4," "5," are hereto attached. Also note made by Elizabeth Ewing, two hundred, eighty-nine dollars, and sixty cents ($289.60), endorsed by Morse, Mitchell & Williams, copy attached, marked "6." All the above notes are still owned by said bank and are unpaid.

10. Said bank also held and owned notes made by F. E. Morse & Son, another business firm of said Chicago, said F. E. Morse being the above-named Francis E. Morse, for the sum of eighty-five hundred dollars ($8,500.00), which notes were endorsed by said Morse, Mitchell & Williams and discounted for the benefit of said Morse & Son by said bank, copies of said notes

marked "7" and "8" are hereto attached. Said F. E. Morse & Son became insolvent and made an assignment for the benefit of their creditors, and said notes were presented as a claim against the estate of said F. E. Morse & Son; and on May 27, 1895, said bank was paid seventeen hundred, nineteen dollars and sixty-four cents ($1,719.64), as a dividend upon said notes. No further payment has been made on said notes. Notice of non-payment of said notes was not given to said endorsers unless constructive notice may be found upon the foregoing facts.

11. Said bank, December 26, 1893, prepared the letter addressed to J. H. Welch, Esq., executor of the will of E. N. Welch, deceased, copy of which is annexed hereto marked "B," which letter was sent to said George H. Mitchell at Forestville, Conn., by said bank, to procure the signature of his wife, said H. Drusilla Mitchell, thereto. Said George H. Mitchell procured said H. Drusilla Mitchell to sign said letter at her home in said Bristol and transmitted the same, by mail, to said bank at Chicago on January 23, 1894. Said H. Drusilla Mitchell executed no other paper or assignment to said bank of her interest in the estate of E. N. Welch, deceased. Upon the receipt of said letter by said bank, said bank executed and transmitted to George H. Mitchell, by mail, the receipt, copy of which is attached, marked "C"; but the same was never delivered by said George H. Mitchell to said H. Drusilla Mitchell, or its existence made known to her until after his death.

12. The printed statutes, and the decisions of courts of last resort, of the State of Illinois, are referred to and made a part hereof as showing the existing law of said State at the time of said several transactions.

13. Said claim was duly presented to the commissioners on the insolvent estate of said H. Drusilla Mitchell and by them allowed at the sum of $28,070.30, and the security therefor was by them found to be equal in value to said amount.

Upon the foregoing facts, by consent of all the parties to the record, said appeal is reserved for the advice of the Supreme Court of Errors next to be held at Hartford, in the First Judicial District, on the first Tuesday in January, 1897.

GEORGE W. WHEELER,
Judge.

EXHIBIT "A."

We hereby request the First National Bank of Chicago to give and continue to Morse, Mitchell & Williams credit as they may desire from time to time, and in consideration of all and any such credit given we hereby guarantee any and all indebtedness now due, or which may hereafter become due, from them to said bank, to the extent of thirty thousand dollars, and waive notice of the acceptance of this guaranty and of any and all indebtedness at any time covered by the same. This guaranty shall continue until written notice from us of the discontinuance thereof shall be received by said The First National Bank of Chicago.

MORSE, MITCHELL & WILLIAMS,
FRANCIS E. MORSE,
FREDERICK C. WILLIAMS,
G. H. MITCHELL,
H. DRUSILLA MITCHELL.

CHICAGO, ILL., February 20, 1891.

EXHIBIT "1."

$3,000. CHICAGO, ILL., April 12, 1893.

Four months after date we promise to pay to the order of the First National Bank three thousand dollars at 34 and 36 Washington Street. Value received.

MORSE, MITCHELL & WILLIAMS.

EXHIBIT "2."

$5.000. CHICAGO, ILL., April 17, 1893.

Four months after date we promise to pay to the order of the First National Bank five thousand dollars at 34 and 36 Washington Street. Value received.

MORSE, MITCHELL & WILLIAMS.

EXHIBIT "3."

No. 87,773.

$5,000. CHICAGO, ILL., May 16, 1893.

Four months after date we promise to pay to the order of the First National Bank of Chicago five thousand dollars, with interest at seven per cent. per annum after due at the office of said bank. Value received.

MORSE, MITCHELL & WILLIAMS.

Payable at 34 and 36 Washington Street, Venetian Bldg.

EXHIBIT "4."

$2,500. CHICAGO, June 10, 1893.

Four months after date we promise to pay to the order of First National Bank twenty-five hundred dollars at 34 Washington Street. Value received.

MORSE, MITCHELL & WILLIAMS.

Indorsed, F. E. Morse & Son.

EXHIBIT "5."

No. 92,099.

$1,000. CHICAGO, ILL., June 30, 1893.

Ninety days after date we promise to pay to the order of the First National Bank of Chicago one thousand dollars, with in-

terest at seven per cent. per annum after due, at the office of said bank. Value received.

MORSE, MITCHELL & WILLIAMS.

EXHIBIT "6."

$289.60. CHICAGO, June 8, 1893.

Three months after date I promise to pay to the order of Morse, Mitchell & Williams two hundred eighty-nine dollars and sixty cents at 34 Washington Street. Value received. Seven per cent. from date.

ELIZABETH EWING.

Indorsed, Paid 10/ 5/93, $50.00
" 10/31/93, 10.00
" 12/ 5/93, 5.00
" 5/ 5/94, 10.00
" 8/ 8/95, 50.00

MORSE, MITCHELL & WILLIAMS.

EXHIBIT "7."

$5,000. CHICAGO, April 1, 1893.

Four months after date we promise to pay to the order of the First National Bank of Chicago five thousand dollars at 100 State Street, Chicago, Ill. Value received.

F. E. MORSE & SON.

Indorsed, Paid 5/27/95, $1,719.64. Paid by assignee.

MORSE, MITCHELL & WILLIAMS.

EXHIBIT "8."

$3,500. CHICAGO, June 10, 1893.

Four months after date we promise to pay to the order of

the First National Bank of Chicago, thirty-five hundred dollars at the First National Bank. Value received.

F. E. MORSE & SON.

Indorsed, Morse, Mitchell & Williams.

EXHIBIT "B."

CHICAGO, ILL., December 26, 1893.

J. H. Welch, Esq.,

Executor of the will of E. N. Welch, deceased.

Forestville, Conn.

DEAR SIR: I desire to notify you that I have assigned, set over, and transferred to the First National Bank of Chicago, Ill., all my right, title, and interest in and to so much of the estate of my late father, E. N. Welch, deceased, as has not been distributed, and you will, therefore, account for and pay over to said First National Bank of Chicago, instead of to me, all money and other property coming to me or to which I may be entitled, at any time hereafter, from said estate of my deceased father.

Please note at the foot hereof, for the satisfaction and security of said bank, that you will undertake to do this, and in case you should cease to be executor of the estate, otherwise than by death, you would promptly give notice of the fact to said bank, in order that it might give express notice of this assignment to your successor in the trust.

Yours truly,

H. DRUSILLA MITCHELL.

I take notice of the foregoing and will comply therewith.

J. H. WELCH,
Executor.

EXHIBIT "G."

December 26, 1893.

Received of H. Drusilla Mitchell an assignment of all her right, title, and interest in the undistributed estate of her late father, E. N. Welch, deceased, the same being so received in pledge to secure the payment of her indebtedness to the undersigned, its successors or assigns, upon her guaranty of certain notes made or endorsed by Morse, Mitchell & Williams of Chicago, amounting to $26,000, more or less.

In consideration of security pledged as aforesaid, the undersigned undertakes and promises to surrender and re-assign the same, or so much thereof as shall not have been applied on said indebtedness, at any time on demand after payment in full of the indebtedness aforesaid, and not to enforce or demand payment of said indebtedness from said H. Drusilla Mitchell, her heirs, executors, or administrators prior to January 1, 1895, except from the interest or property assigned as security aforesaid.

THE FIRST NATIONAL BANK OF CHICAGO,
By L. J. Gage, *Pt.*

Filed and granted December 17, 1896.

George A. Conant,
Assistant Clerk.

Edward A. Freeman, Trustee, Appeal from Doings of Commissioners, Estate of H. Drusilla Mitchell.	Superior Court, Hartford County. December 17, 1896.

RESERVATION.

The above-entitled case, by consent and at the request of all the parties to the record, is reserved for the advice of the Supreme

Court of Errors upon the issues joined and facts agreed and stipulated by the parties.

GEORGE W. WHEELER,
Judge.

SUPERIOR COURT, HARTFORD COUNTY, } *Clerk's Office.*

The above and foregoing is a true copy of record in said Superior Court.

Attest, C. W. JOHNSON, *Clerk.*

SUPREME COURT, HARTFORD COUNTY, } *Clerk's Office.*

The above and foregoing is a true copy of record in said Supreme Court.

Attest, C. W. JOHNSON, *Clerk.*

At a Supreme Court of Errors holden at Hartford, in and for the First Judicial District of the State of Connecticut, on the first Tuesday of January, in the year of our Lord one thousand eight hundred and ninety-seven:

Present,

Hon. CHARLES B. ANDREWS, *Chief Justice.*
Hon. DAVID TORRANCE,
Hon. AUGUSTUS H. FENN,
Hon. SIMEON E. BALDWIN,
Hon. WILLIAM HAMERSLEY,
} *Associate Judges.*

Hon. Frederic B. Hall, Judge of the Superior Court, attending and acting as Judge of the Supreme Court of Errors in the case of State of Connecticut vs. Henry T. Blake, Trustee, *et al.*, in place of Baldwin, Judge, disqualified.

EDWARD A. FREEMAN, TRUSTEE, APPEAL FROM THE DOINGS OF COMMISSIONERS ON ESTATE OF H. DRUSILLA MITCHELL, INSOLVENT DEBTOR.	The twenty-third day of February, 1897. Reservation by the Superior Court in and for the County of Hartford.

JUDGMENT.

This reservation, presenting questions of law which have arisen in the trial of said cause pending in said Superior Court, as may appear in the certified transcript of record and finding of the trial judge on file in this court, was made by said Superior Court on December 17, 1896, and came to this court at its January term, 1897, when the appellant and The First National Bank of Chicago appeared and were fully heard.

Whereupon it is considered and adjudged that the said Superior Court be and is hereby advised to disallow all the claim of the appellee, The First National Bank of Chicago.

All which I have caused by these presents to be exemplified and the seal of the Supreme Court of Errors of the State of Connecticut to be hereunto affixed, and do hereby certify that the within and foregoing is a true copy of said original files and record.

In testimony whereof I hereunto set my hand and affix the seal of said court, at Hartford, in said county and State, this thirteenth day of March, A.D. 1899.

GEORGE A. CONANT,

[SEAL.] Clerk of the Supreme Court of Errors for the First Judicial District, County of Hartford, State of Connecticut.

STATE OF CONNECTICUT, } ss.
LITCHFIELD COUNTY. }

I, Charles B. Andrews, Chief Justice of the Supreme Court of Errors of the State of Connecticut, do hereby certify that George A. Conant, whose name is subscribed to the preceding exemplification, is the Clerk of the said Supreme Court of Errors in and for said Hartford County, being in the First Judicial District of said State of Connecticut, duly appointed and sworn; that the above is his genuine official signature, and that full faith and credit are due to his official act. I further certify that the seal affixed to said exemplification is the seal of the Supreme Court of Errors, and that the foregoing attestation is in due form.

Dated at Litchfield, this 17th day of March, A. D. 1899.

CHARLES B. ANDREWS,
Chief Justice of the Supreme Court of Errors
of the State of Connecticut.

Exhibit "C."

Writ of Error.

UNITED STATES OF AMERICA, ss.

THE PRESIDENT OF THE UNITED STATES OF AMERICA TO THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CONNECTICUT, — GREETING:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court before you, or some of you, between the First National Bank of Chicago and H. Drusilla Mitchell *et al.*, a manifest error hath happened, to the great damage of the said The First National Bank, as is in and appears by said complaint, we, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Justices of the United States Circuit Court of Appeals for the Second Circuit, together with this writ of error, so that you have the same at said place before the Justices aforesaid on the 10th day of April next, that the record and proceedings aforesaid being inspected, the said Justices of the Court of Appeals may cause further to be done therein to correct the error, what of right and according to the law and custom of the United States ought to be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 12th day of March, in

the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States the one hundred and twenty-second.

E. E. MARVIN,
Clerk of the Circuit Court of
the United States for the
District of Connecticut.

[SEAL.]

Allowed:

N. SHIPMAN,
Circuit Judge.

(Endorsed) — No. 435.— U. S. Circuit Court.— First National Bank of Chicago *vs.* H. Drusilla Mitchell *et al.*— Writ of Error.— Filed March 12, 1898.— E. E. Marvin, Clerk.

FIRST NATIONAL BANK OF CHICAGO
vs.
H. DRUSILLA MITCHELL *et al.*

Be it remembered that heretofore, to wit, on the 30th day of December, A.D. 1895, H. Drusilla Mitchell and G. H. Mitchell, her husband, both of Bristol, Hartford county, and State of Connecticut, were attached and summoned to appear before the Circuit Court of the United States of America for the District of Connecticut, to be held in the United States Court Room in the city of New Haven, on the fourth Tuesday of April, A.D. 1896, then and there to answer unto the First National Bank of Chicago, a corporation duly organized under the laws of the United States, and located and doing business in the city of Chicago, State of Illinois, in a civil action, and herein the plaintiff complains and says:

1. The plaintiff is a corporation duly organized under the laws of the United States and having its principal place of business in the city of Chicago, in the State of Illinois, and is a citizen of said State.

2. The defendants are residents of the town of Bristol, in the State and District of Connecticut, and are citizens of said State.

3. On the 20th day of February, 1891, the defendant, H. Drusilla Mitchell, at said Chicago, by an instrument in writing (a copy of which is hereto attached, marked "Exhibit A," and made part of this paragraph), requested the plaintiff to extend credit from time to time to a copartnership, doing business at said Chicago under the name of Morse, Mitchell & Williams, and in consideration of such credit being given to said Morse, Mitchell & Williams by the plaintiff, the defendant the said H. Drusilla Mitchell guaranteed and promised to pay to the plaintiff all sums of money to the extent of thirty thousand dollars which should become due to the plaintiff from said Morse, Mitchell & Williams.

4. Relying upon said guarantee and promise and in consideration thereof, the plaintiff extended credit and advanced money to said Morse, Mitchell & Williams from time to time within the time specified in said instrument to the amount of thirty thousand dollars.

5. Said Morse, Mitchell & Williams have not repaid said sums to the plaintiff, and the same now are and long since have been due to the plaintiff from the defendant the said H. Drusilla Mitchell.

6. On or about the 1st day of December, 1893, the plaintiffs demanded payment of the amount of money due under said instrument from the defendant the said H. Drusilla Mitchell and the same was refused.

The plaintiff claims thirty thousand dollars damages. And you are further commanded to have a true and attested copy of

this writ and of the accompanying complaint at least twenty days before the session of this court to which it is returnable, with J. H. Welch, of the town of Bristol, in said District and State of Connecticut, or at his usual place of abode, as he is the executor of the will of E. N. Welch, deceased, and as such executor is the agent, trustee, and debtor of said defendant H. Drusilla Welch, and as such executor has concealed in his hands the goods or estate of the said H. Drusilla Mitchell, or as such executor is indebted to her.

And thereafter, to wit, of the 20th day of April, A.D. 1896, the defendants entered their appearance by Messrs. C. E. Mitchell and T. M. Maltbie, and filed their plea in abatement as follows, viz.:

First National Bank of Chicago	Circuit Court of the U.
vs.	S., Dis. of Connect't,
H. Drusilla Welch *et al.*	April, 28, 1896.

IN ABATEMENT.

The defendant H. Drusilla Mitchell pleads in abatement, because at the time said contract is alleged to have been made and at the time of the commencement of this action she was a married woman, the wife of George H. Mitchell, since deceased, and was so married prior to April 27, 1877, viz.: on the day of , 1857, and has not entered into the contract authorized by Section 2798, General Statutes of Connecticut.

And therefore she prays judgment

By C. E. Mitchell and T. M. Maltbie,
Her Attorneys.

Second Substitute Plea in abatement.

CIRCUIT COURT OF THE UNITED STATES,

DISTRICT OF CONNECTICUT.

MAY 22, 1897.

FIRST NATIONAL BANK OF CHICAGO
vs.
H. DRUSILLA MITCHELL *et al.*

IN ABATEMENT.

The defendant H. Drusilla Mitchell pleads in abatement, because she signed said writing, Exhibit "A," at her domicile in Bristol, in the State of Connecticut, and was, at the time of signing the same, a married woman, the wife of said George H. Mitchell, to whom she was married in 1857, at said Bristol, where she has ever since resided.

And therefore she prays judgment.

H. DRUSILLA MITCHELL,
By T. M. MALTBIE,
Her Atty.

U. S. CIRCUIT COURT,

DISTRICT OF CONNECTICUT.

MAY 26, 1897.

FIRST NATIONAL BANK OF CHICAGO
vs.
H. DRUSILLA MITCHELL.

ANSWER.

1. Paragraphs 1 and 2 of the complaint are admitted.

2. Paragraph 3 is denied. Said writing, "Exhibit A," was signed by the defendant at her domicile in Bristol, in the State of Connecticut, and was not otherwise made, executed, or delivered by her.

3. The defendant, at the time she signed said writing, was a married woman, the wife of George H. Mitchell, of said Bristol, to whom she was married in 1857, at said Bristol, where she then resided, and ever since has resided.

4. Paragraphs 4 and 5 are denied. Said copartnership of Morse, Mitchell & Williams, at the time the said writing, Exhibit "A," was signed by the defendant, and prior thereto, was indebted to the plaintiff in a large sum, viz.: $25,000 and more; and the plaintiff did not thereafter give said copartnership additional credit, but such indebtedness was larely reduced.

T. M. Maltbie,
Atty. for Defendant.

Stipulation.

U. S. CIRCUIT COURT,
District of Connecticut.
May 26, 1897.

First National Bank of Chicago
vs.
H. Drusilla Mitchell.

We hereby stipulate and agree that the above entitled case shall be withdrawn from the jury and be tried to the Court.

Case, Bryant & Case
Attys. for Plaintiff.

T. M. Maltbie,
Atty. for Defendant.

And thereafter, on the 8th day of June, 1897, the facts in the case were agreed to by the parties and filed in court as follows, viz.:

THE CLAIMS OF THE FIRST NATIONAL BANK OF CHICAGO AGAINST MRS. H. DRUSILLA MITCHELL.

STATEMENT OF FACTS.

1. Said bank is organized under the laws of the United States and engaged in the business of banking in Chicago, in the State of Illinois.

2. Said H. Drusilla Mitchell was born and has always resided in Bristol, State of Connecticut. She was married there in 1857 to George H. Mitchell, and with her said husband established a home at Forestville, in said Bristol, where they resided until his death, which occurred March, 1896, and where she now resides.

3. Said George H. Mitchell was a member of the firm of Morse, Mitchell & Williams, a copartnership located at said Chicago, engaged in mercantile and real estate business. The other members of said firm were Francis E. Morse and Frederick C. Williams, both of said Chicago.

4. Said Morse, Mitchell & Williams kept an account and did business with said First National Bank, and on the 20th day of February, 1891, were largely indebted to said bank, viz.: in the sum of twenty thousand dollars ($20,000) or more, as evidenced by their notes payable to said bank.

5. On said February 20, 1891, said firm and said Morse, Williams, and George H. Mitchell executed to said bank at Chicago the paper, a copy of which is hereto annexed, marked "A."

Said paper was prepared by said bank, which had agreed with said firm to continue the line of credits to it upon the execution of said paper by said firm and its individual members, and by Mrs. H. Drusilla Mitchell, then at her home in said Bristol.

6. Said George H. Mitchell thereupon took said paper and brought it with him to his residence at said Forestville, and there procured his said wife, H. Drusilla Mitchell, to sign the same, and the same was thereafter enclosed, addressed and sent by mail to said Morse, in Chicago, who delivered said paper to said bank.

7. Said bank continued to extend credit to said Morse, Mitchell & Williams until said firm became insolvent and made an assignment for the benefit of its creditors on July 30, 1893.

8. At the time of such insolvency and assignment said bank held and owned the notes of Morse, Mitchell & Williams, renewals of unpaid portions of said first mentioned notes for the sum of sixteen thousand five hundred dollars ($16,500), copies of which renewal notes, marked respectively "1," "2," "3," "4," "5," are hereto attached. Also note made by Elizabeth Ewing, two hundred eighty-nine dollars and sixty cents ($289.60), endorsed by Morse, Mitchell & Williams, copy attached, marked "6."

9. Said bank also held and owned notes made by F. E. Morse & Son, another business firm in Chicago, said F. E. Morse being the above-mentioned Francis E. Morse, for the sum of eighty-five hundred dollars ($8,500), which notes were endorsed by said Morse, Mitchell & Williams, and discounted for the benefit of said Morse & Son by said bank. Copies of said notes, marked "7" and "8," are hereto attached. Said F. E. Morse & Son became insolvent, and made an assignment for the benefit of their creditors, and said notes were presented as a claim against the estate of F. E. Morse & Son, and on May 27, 1895, said bank

was paid seventeen hundred nineteen dollars and sixty-four cents ($1,719.64) as a dividend upon said notes.

Notice of non-payment of said notes was not given to said endorsers, except the constructive notice arising from the foregoing facts.

10. Said bank, December 26, 1893, prepared the letter addressed to J. H. Welch, Esq., executor of the will of E. N. Welch, deceased, a copy of which is hereto annexed, marked "B," which letter was sent to said George H. Mitchell, at Forestville, Conn., by said bank to procure the signature of his wife, said H. Drusilla Mitchell, thereto. With reference to said letter, said George H. Mitchell addressed said bank letters dated December 30, 1893, January 8, 1894, and January 23, 1894, in the last of which letters he enclosed said letter addressed to J. H. Welch. He also received from Orville Peckham, attorney of said bank, a letter dated January 10, 1894. Copies of said letters are hereto attached, marked "C," "D," "E," "F." Said letters were duly mailed and received by the parties to whom addressed. Upon the receipt of said letters by said bank, said bank executed and transmitted to George H. Mitchell by mail the receipt, copy of which is attached, marked "G," but the same was never delivered by said George H. Mitchell to said H. Drusilla Mitchell, or its existence made known to her until after his death.

11. The printed statutes and the decisions of courts of last resort of the State of Illinois are referred and made part hereof, as showing the existing law of said State at the time of said several transactions.

12. The original notes, papers, and letters in said bank or its attorneys, copies of which are hereto attached, shall be produced for examination and use in the trial and argument when said claim is heard.

13. It is expressly stipulated by the parties hereto that this agreed statement of facts may be used upon the hearing as to the allowance of this claim by the commissioners on the insolvent estate of H. Drusilla Mitchell, and in case of appeal by either party from the allowance or disallowance of said claim upon the hearing of such appeal in the Superior Court for Hartford county or any other Court which may hear the same. Also that the statement of facts may be used by either party in the treatment of the case now pending in the United States Circuit Court for the District of Connecticut.

Dated at Hartford, this June 9, 1896.

CASE, BRYANT & CASE,
Attorneys for the First National Bank of Chicago.

T. M. MALTBIE,
Atty. for H. Drusilla Mitchell, E. A. Freeman, Trustee, etc.

EXHIBIT "A."

We hereby request the First National Bank of Chicago to give and continue to Morse, Mitchell & Williams credit as they may desire from time to time, and in consideration of all and any such credit given we hereby guarantee any and all indebtedness now due or which may be hereafter become due from them to said bank to the extent of thirty thousand dollars and waive notice of the acceptance of the guaranty and of any and all indebtedness at any time covered by the same.

This guaranty shall continue until written notice from us of the discontinuance thereof shall be received by the said

First National Bank of Chicago.

MORSE, MITCHELL & WILLIAMS,
FRANCIS E. MORSE,
FREDERICK C. WILLIAMS,
G. H. MITCHELL,
H. DRUSILLA MITCHELL.

CHICAGO, ILL., February 20, 1891.

EXHIBIT "1."

$3,000. CHICAGO, ILL., April 12, 1893.

Four months after date we promise to pay to the order of the First National Bank three thousand dollars at 34 and 36 Washington Street. Value received.

MORSE, MITCHELL & WILLIAMS.

EXHIBIT "2."

$5,000. CHICAGO, ILL., April 17, 1893.

Four months after date we promise to pay to the order of the First National Bank five thousand dollars at 34 and 36 Washington Street. Value received.

MORSE, MITCHELL & WILLIAMS.

EXHIBIT "3."

No. 87,773.

$5,000. CHICAGO, ILL., May 16, 1893.

Four months after date we promise to pay to the order of the First National Bank of Chicago, Five Thousand Dollars with interest at seven per cent. per annum, after due at the office of said bank. Value received.

MORSE, MITCHELL & WILLIAMS.

Payable at 34 and 36 Washington Street, Venetian Bldg.

EXHIBIT "4."

$2,500. CHICAGO, June 10, 1893.

Four months after date we promise to pay to the order of First National Bank Twenty-five Hundred Dollars, at 24 Washington Street. Value received.

MORSE, MITCHELL & WILLIAMS.

Indorsed, F. E. Morse & Son.

EXHIBIT "5."

No. 92,099.

$1,000. CHICAGO, ILL., June 30, 1893.

Ninety days after date we promise to pay to the order of the First National Bank of Chicago one thousand dollars with interest at seven per cent. after due at the office of said Bank. Value received.

MORSE, MITCHELL & WILLIAMS.

EXHIBIT "6."

$289.60. CHICAGO, June 8, 1893.

Three months after date I promise to pay to the order of Morse, Mitchell & Williams two hundred eighty-nine 60/100 dollars at 34 Washington Street. Value received. Seven per cent. from date.

ELIZABETH EWING.

Endorsed, Paid 10/ 3/93, $50.00
" 10/31/93, 10.00
" 12/ 5/93, 5.00
" 5/ 5/94, 10.00
" 8/ 8/95,

MORSE, MITCHELL & WILLIAMS.

EXHIBIT "7."

$5,000. CHICAGO, April 1, 1893.

Four months after the date we promise to pay to the order of the First National Bank of Chicago Five Thousand Dollars at 100 State Street, Chicago, Ill. Value received.

F. E. MORSE & SON.

Indorsed, Paid 5/27/95. $1,719.64. Paid by assignee.

MORSE, MITCHELL & WILLIAMS.

EXHIBIT "8."

$3,500. CHICAGO, June 10, 1893.

Four months after date we promise to pay to the order of the First National Bank of Chicago Thirty-five hundred dollars at the First National Bank. Value received.

F. E. MORSE & SON.

Indorsed, Morse, Mitchell & Williams.

EXHIBIT "B."

CHICAGO, ILL., December 28, 1893.

J. H. WELCH, Esq.,

Executor of the Will of E. N. Welch, Deceased,

Forestville, Conn.

DEAR SIR: I desire to notify you that I have assigned, set over, and transferred to the First National Bank of Chicago, Illinois, all my right, title, and interest in and to so much of the estate of my late father, E. N. Welch, deceased, as has not been distributed, and you will therefore account for and pay over to the said First National Bank of Chicago, instead of to me, all money and other property coming to me or to which I may be

entitled at any time hereafter from said estate of my deceased father. Please note at the foot hereof, for the satisfaction and security of said bank, that you will undertake to do this, and in case you should cease to be the executor of the estate otherwise than by death you would promptly give notice of the fact to said bank in order that it might give express notice of this assignment to your successor in the trust.

Yours truly,

H. DRUSILLA MITCHELL.

I take notice of the foregoing and will comply therewith.

J. H. WELCH,
Exr.

EXHIBIT "C."

FORESTVILLE, CONN., December 30, 1893.

I arrived home yesterday and at this writing is inclined to sign the papers which I brought with me. She wishes to consider the matter over Sunday but I think there is no doubt that I will be able to send it to you the first of the week.

Yours very truly,

(Signed) G. H. MITCHELL.

EXHIBIT "D."

FORESTVILLE, CONN., January 8, 1894.

FIRST NATIONAL BANK, CHICAGO, ILL.

GENTLEMEN: I have to make one more apology. I was called to New York on important business connected with our Clock Company last week and only returned Saturday, consequently I was unable to attend to our matters and it was only to-day that I succeeded in getting the signatures as Mr. Welch has also been away. I now enclose the paper just as you lawyers

wrote it, except that I have, by advice of my counsel, added the conditions which I presume will be satisfactory to you.

Will you kindly own receipt of same and also send me a statement of the notes up to January 1st and oblige

Yours very truly,

(Signed) G. H. MITCHELL.

EXHIBIT "E."

CHICAGO, ILL., Jan. 10, 1894.

GEO. H. MITCHELL, Esq.,

Forestville, Conn.

DEAR SIR: Your favor of the 8th inst. to First National Bank has been referred to me. The additions made by Mrs. Mitchell to the terms of the assignment of her interest in her father's estate are not satisfactory and are not in accordance with the arrangements made between you and the bank when you were here. You will, I think, remember that the arrangement was that the assignment should be on its face unconditional, but that I should prepare and the bank should give Mrs. Mitchell a paper setting forth the terms on which the assignment was received and was to be held. I have drawn such a paper and enclose it and the paper signed by Mrs. Mitchell herewith. Please substitute for the latter a new instrument, leaving out the last two paragraphs of the present one and send it to me, keeping for Mrs. Mitchell the bank's receipt, etc.

Your counsel will probably see no objection to the form in which I have preferred to provide the protection which Mrs. Mitchell is entitled to and will find it sufficient besides being what was agreed to with you. It is the form in which we always put such matters, and they are very frequent matters with us. You will note that Mrs. Mitchell is given the time to January 1, 1895, which you stipulated for while here. The bank under-

stands from you that the remaining estate of Mr. E. N. Welch is not distributable under the will (or at least that a large part of it is not), for some two or three years yet. The executor will understand of course, that we shall and can demand under the assignment only what Mrs. Mitchell herself could demand.

Yours very truly,

(Signed) ORVILLE PECKHAM.

EXHIBIT "F."

FORESTVILE, CONN., January 23, 1894.

FIRST NATIONAL BANK, CHICAGO, ILL.

GENTLEMEN: Once more I have got the parties together and herewith enclose the document as originally made by you and which I trust will now be satisfactory. Apologizing for keeping you waiting, I remain,

Yours very truly,

G. H. MITCHELL.

EXHIBIT "G."

December 26, 1893.

Received of H. Drusilla Mitchell an assignment of all her right, title, and interest in the undistributed estate of her late father, E. N. Welch, deceased, the same being so received in pledge to secure the payment of her indebtedness to the undersigned, its successors or assigns, upon her guaranty of certain notes made or endorsed by Morse, Mitchell & Williams, of Chicago, amounting to $26,000, more or less.

In consideration of security pledges as aforesaid, the undersigned undertakes and promises to surrender and reassign the same or so much thereof as shall not have been applied on said

indebtedness at any time after payment in full of the indebtedness aforesaid and not to enforce or demand payment of said indebtedness from said H. Drusilla Mitchell, her heirs, executors, or administrators, prior to January 1, 1895, except from the interest or property assigned as security aforesaid.

THE FIRST NATIONAL BANK OF CHICAGO,
By L. T. Gage, *Pr.*

UNITED STATES CIRCUIT COURT,

District of Connecticut.

First National Bank of Chicago
vs.
H. Drusilla Mitchell.

TOWNSEND, *District Judge*:

Action on a guaranty, heard upon complaint and answer and an agreed statement of facts. The defendant is a resident of Connecticut and a married woman, having been married in 1857, and having resided continuously at Bristol, Connecticut, since that time.

Defendant's husband, G. H. Mitchell, was a member of a copartnership, Morse, Mitchell & Williams, doing business at Chicago.

At the request of her husband she signed a guaranty, which was taken by him to Chicago and there delivered to the plaintiff. The guaranty was dated at Chicago, and had been signed by the members of the firm there before it was signed by the defendant.

Plaintiff claims that, although defendant did not personally leave the State of Connecticut, yet, as the written contract was dated at Chicago and was delivered by her husband at Chicago,

and was to be performed there, defendant must be taken to have made the contract at Chicago, and as in Illinois a married woman is allowed to contract for all purposes, defendant could so contract in Illinois, and is bound by the guaranty.

After the suit was brought defendant made an assignment in insolvency. The plaintiff presented the claim herein involved to the commissioners on her estate, and it was allowed by them, and the case was taken by her trustee in insolvency by appeal to the Superior Court, and upon reservation to the Supreme Court of Errors of Connecticut, where precisely the same facts were presented and passed upon.

The Court there held that defendant, being a married woman, had no capacity to make any such contract; that to sign the guaranty in Connecticut and authorize her husband as her agent to deliver the guaranty at Chicago was to enter into a contractual relation in Connecticut which she had no capacity to do; that, therefore, she could not while in Connecticut authorize her husband to take the guaranty to Chicago and deliver it, and that, therefore, it was never delivered by her.

Before considering the legal propositions involved in this decision, the question arises whether this Court will enforce against a married woman who has always resided in Connecticut a contract made by her in writing sent to another State, she not personally leaving the State of Connecticut, which the highest court of Connecticut has pronounced invalid and unenforcible in that State.

In Miliken vs. Pratt, 125 Mass., 375, the facts were practically identical; the guaranty in that case having been taken by the husband to the State of Maine. The Court held that the contract was made in Maine and valid in Massachusetts, saying: "If the contract is completed in any State it makes no difference in principles whether the citizen of this State goes in person or

sends an agent or writes a letter across the boundary line between the two states."

In finally deciding the question, however, the Court lay stress upon the fact that at the time of the trial of the case the wife could have legally made the contract in Massachusetts, saying: "The question, therefore, is whether a contract made in another State, which a married woman was not at the time capable of making under the law of this commonwealth, but was then allowed by the law of that State to make and which she could now legally make in this commonwealth, will sustain a case against her in our courts."

And Milliken vs. Pratt also seems to hold that the guaranty made in Maine, as above stated, would not be enforcible in Massachusetts if Massachusetts had not consented to such enforcement, saying: "As the law of another State cannot operate or be executed in this State by its own force, but only by the comity of this State, its approbation and enforcement here may be restricted by possible prohibition of statute. A State may always, by express enactment, protect itself from being obliged to enforce in its courts contracts made abroad by its citizens which are not authorized by its own laws. It is possible, also, that in a State where the common law prevails in full force, by which a married woman was deemed incapable of binding herself by any contract whatever it may be inferred that such an utter incapability lasting throughout the joint lives of husband and wife must be construed as so fixed by the settled policy of the State for the protection of its own citizens that it could not be held by the Courts of that State to yield to the laws of another State in which she might undertake to contract."

In Bell vs. Packard, 69 Maine, 105, a married woman sent a contract to Maine, where she could have legally made it, and the Supreme Court of Maine held that the contract was made in Maine and was valid and enforcible there.

In Bowles v. Field, 78 Fed., 742, a married woman residing in Indiana, while transiently in Ohio, gave notes as surety for her husband. The laws of Indiana allowed a married woman to contract for all purposes, except as specially provided, and among the exceptions was a contract for suretyship. The Court held, that having a general power to contract this particular limitation could have no extra territorial force. The Court said: "It is not charged that she went to Ohio and executed the notes as surety for her husband for the purpose of evading the law of domicil." This seems to be an intimation that if she had not had a general power to contract and had remained in Indiana, the contract would not have been enforcible.

The common law which makes the contract of a married woman invalid may still be accepted as the general rule for the states which have not made exceptions by statute. The three cases cited above, holding the contract of a married woman valid, are in states where a woman has this general power to contract, and it is implied in two of these decisions that the State of her domicil would have had the power to protect a married woman from the result of her contract made while personally present in such State if it had chosen to do so. It may be admitted, as stated by Judge Story in his Conflict of Laws, Sec. 103, in regard to incapacity incident to coverture, "The law of the place where the contract is made or the act is done now governs." And that as stated in Scudder vs. Bank, 91 U. S., 406: "The validity of a contract is to be determined by the law of the place where it is made." Yet I do not think this principle has been carried so far in any decided case as a judgment for the plaintiff in this case would require.

The capacity of citizens of a State so long as they actually remain within the borders of the State would seem to be a matter of local law to be controlled by the laws of the State and not to be evaded by the simple device of sending or mailing a letter to some other State. Suppose that the laws of State should pro-

vide that infants might attain their majority and become capable of contracting at the age of eighteen years, could it be held that a minor, eighteen years old, in Connecticut, could by mailing a contract to that State subject his property in Connecticut to execution against the will of her guardian and against the determination of the Legislature and Courts of Connecticut?

"It may be said generally wherever the decisions of the State courts related to some law of a local character which may have become established by those courts or has always been a part of the law of the State that the decisions upon the subject are usually conclusive and always entitled to the highest respect of the Federal Court." Where such local law on custom has been established by repeated decisions of the highest courts of the State, it becomes also the law governing courts of the United States sitting in that State" (Bacher vs. Cheshire R. R. Co., 125 U. S., 555; Burgess vs. Seligmann, 107 U. S., 20.)

In the present case the law by which the invalidity of a contract is established is the common law, and the decisions that a married woman has capacity to make such contracts are founded upon local statutes.

In these circumstances, I think, it is the duty of this Court to follow the decisions of the Connecticut court of last resort. Let judgment be entered for defendant.

CASE, BRYANT & CASE,
for Plaintiffs.

HUNGERFORD & MALTBIE,
for Defendants.

And at the same term of court, to wit, on the 7th day of March, the plaintiff, by its attorneys, duly appeared, and the defendant, by her attorneys, also duly appeared and demanded judgment in accordance with the decision of Court, whereupon

it is considered and adjudged by the Court that the issue is for the defendant, and that the defendant do recover of the plaintiff its costs.

THE UNITED STATES CIRCUIT COURT OF APPEALS,

OCTOBER TERM, 1897.

FIRST NATIONAL BANK OF CHICAGO
vs.
H. DRUSILLA MITCHELL *et al.*

ASSIGNMENT OF ERRORS.

Afterwards, to wit, on the 12th day of March, 1898, comes the First National Bank of Chicago, plaintiff in error, by their attorneys, Case, Bryant & Case, and say that the order and judgment in said cause is erroneous and against the just rights of the plaintiff in error and for the following reasons:

FIRST. — Because the Court, though requested, did not hold that the guaranty, upon which this suit was brought, was executed by the said H. Drusilla Mitchell, in the city of Chicago, where the same would be a valid contract.

SECOND. — Because the Court, though requested, did not hold that said guaranty was made and delivered in Chicago, in the State of Illinois, and governed by the laws of the State of Illinois.

THIRD. — Because the Court, though requested, did not hold that said guaranty was an Illinois contract and governed by the laws of Illinois and enforcible by comity in this jurisdiction.

FOURTH. — Because the Court, though requested, did not hold that the delivery of said contract in Chicago by said Francis E. Morse was a delivery in Chicago by said H. Drusilla Mitchell.

FIFTH. — Because the Court refused to hold that H. Drusilla Mitchell could, by sending said guaranty by mail to Chicago for delivery, thereby make the same a valid contract under the laws of Illinois, when the same was properly delivered and accepted and enforcible in this jurisdiction.

SIXTH. — Because the Court, though requested, did not hold that a contract in writing made by a married woman to be performed in Illinois and enforced in Illinois by the laws was enforcible in the State of Connecticut.

SEVENTH. — Because the Court, though requested, did not hold that said contract was a good and valid contract, and enforcible in Connecticut.

EIGHTH. — Because the Court did not render judgment in favor of the plaintiff in error instead of in favor of the defendant in error.

PLAINTIFF IN ERROR,
By CASE, BRYANT & CASE,
Its Attorneys.

CIRCUIT COURT OF THE UNITED STATES,

FOR THE DISTRICT OF CONNECTICUT.

FIRST NATIONAL BANK OF CHICAGO
vs.
H. DRUSILLA MITCHELL *et al.*

PETITION FOR WRIT OF ERROR.

The First National Bank of Chicago, by its attorneys, Case, Bryant & Case, considering itself aggrieved by the order and judgment entered on the 7th day of March, 1898, in the above

entitled cause, does hereby petition for a writ of error from said order of judgment to the United States Circuit Court of Appeals for the Second Circuit, for the reasons specified in the assignment of error, which is filed herewith, and it prays that such writ of error may be allowed, and that a transcript of the record, proceedings and papers upon which said order and judgment were made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Second Circuit.

Dated March 12, 1898.

CASE, BRYANT & CASE,
Attorneys for the Plaintiff.

The foregoing petition for a writ of error is allowed.

Dated March 12, 1898.

N. SHIPMAN,
Circuit Judge.

UNITED STATES CIRCUIT COURT OF APPEALS,

OCTOBER TERM, 1897.

FIRST NATIONAL BANK OF CHICAGO
Plaintiff in Error,
vs.
H. DRUSILLA MITCHELL.
Defendant in Error.

Know all men by these presents that we, The First National Bank of Chicago, Cook County, State of Illinois, as principal, and Percy S. Bryant, of East Hartford, Hartford County, Connecticut, as surety, are held and firmly bound unto H. Drusilla Mitchell *et al.*, the above named defendants in error, in the sum of two hundred and fifty dollars to be paid to the said H. Drusilla Mitchell *et al.*, their executors, administrators, and assigns,

to the which payment well and truly to be made we bind ourselves and each of us jointly and severally and our successors and our heirs, executors, administrators, and assigns firmly by these presents.

Dated this 12th day of March, 1898.

Whereas, the above named The First National Bank of Chicago has petitioned for a writ of error to the United States Circuit Court of Appeals for the Second Circuit to reverse the judgment rendered in the above entitled action by the Circuit Court of the United States for the District of Connecticut;

Now, therefore, the condition of this obligation is such that if the above named The First National Bank of Chicago shall prosecute its said writ of error to effect and answer all costs if it shall fail to make good its plea, then this obligation shall be void, otherwise to remain in full force and virtue.

THE FIRST NATIONAL BANK OF CHICAGO, [L. S.]

By CASE, BRYANT & CASE, *Attys.*

PERCY S. BRYANT, [L. S.]

Approved March 12, 1898.

N. SHIPMAN,
Circuit Judge.

UNITED STATES OF AMERICA, *ss.*:

To H. DRUSILLA MITCHELL *et al.*, GREETING:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Second Circuit, in the city of New York, in the State of New York, on the 9th day of April, A.D. 1898, pursuant to a writ of error granted and filed in the Clerk's office of the Circuit Court of the United States for the District of Connecticut, wherein the First National

Bank of Chicago is plaintiff in error, and you are the defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and reversed, and speedy justice should be done to the parties in that behalf.

Dated at Hartford, March 12, 1898.

N. SHIPMAN,
Circuit Judge.

Service of the above and foregoing citation is hereby accepted.

Dated this 12th day of March, 1898.

DEFENDANT IN ERROR,
By T. M. MALTBIE,
Atty.

CLERK'S OFFICE, U. S. CIRCUIT COURT,
DISTRICT OF CONNECTICUT,
HARTFORD, March 22, 1898.

I, E. E. Marvin, Clerk of the Circuit Court of the United States for the District of Connecticut, do certify that the foregoing is a true copy of the record and proceedings and all things concerning the same of record and on file in said court in a certain action at law therein entitled The First National Bank of Chicago *versus* H. Drusilla Mitchell *et al.*

In testimony whereof, I have set hereto my hand and the seal of said court the day and place first above written.

E. E. MARVIN,
Clerk.

[SEAL.]

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT.

No. 35. — October Term, 1898.

Submitted December 13, 1898. Decided March 1, 1899.

FIRST NATIONAL BANK OF CHICAGO Plaintiff in Error, *vs.* H. DRUSILLA MITCHELL *et al.*, Defendant in Error.	In Error to the Circuit Court of the United States for the District of Connecticut.

Before Judges Wallace, Lacombe, and Shipman.

WALLACE, *Circuit Judge.* — This action was tried in the court below without the intervention of a jury, and upon the facts set forth in the stipulation of the parties, and found by the Court, there should have been a judgment for the plaintiff for the sum indemnified by the guaranty signed by the defendant, H. Drusilla Mitchell, if she, being a married woman, was competent to make the contract. In deciding adversely to the plaintiff, the Court below followed the decision of the Supreme Court of Connecticut in Freeman's Appeal (68 Conn., 533) upon the same facts, in a suit brought by the plaintiff subsequent to the present action to establish the guaranty as a demand against the estate of the defendant in insolvency.

The question in the case is whether a guaranty payable in the State of Illinois and delivered to the plaintiff there, signed by a married woman at her domicile in Connecticut to enable her husband to procure credit with the plaintiff, delivered by her to her husband, and sent by him by mail to the plaintiff, is a valid contract, she being disqualified by the law of Connecticut from making a contract as surety, and authorized to do so by the laws

of Illinois. In other words, the question is whether the incapacity to contract by the law of the State of a person's domicile attaches to his contractual act in another State where the disability has been removed. This question has been much considered by commentators upon private international law, and has encountered the divergence of opinion which so frequently characterizes their essays. We shall not undertake to rehearse their views or summarize their conclusions, or to discuss the question upon principle. It has been considered and decided in respect to the incapacity of coverture and minority several times by the courts of this country, and uniformly with the same result, except in Freeman's Appeal. The previous authorities are collated in Milliken vs. Pratt (125 Mass., 374), and the opinion delivered is such a complete exposition of them, that other references are unnecessary. The judgment determines the precise question presented in this case. In that case the plaintiffs sued in Massachusetts a married woman, domiciled there, who had signed a guaranty for her husband intended to be used by him to obtain credit with the plaintiffs at Portland, Maine. She delivered it to her husband at their home in Massachusetts, and he mailed it there to the plaintiffs at Portland, and the plaintiffs received it at Portland shortly after. By the law of Massachusetts at the time a married woman was incapacitated to make such a contract; by the law of Maine she was not. The Court decided that the contract was made in Maine and controlled by the law of that State; that as regarded the capacity of the defendant, its validity depended upon the law of that State; and that as the law of Maine authorized a married woman to bind herself by such a contract, it was a valid contract, and the plaintiffs were entitled to recover.

A case exactly coincident in its facts with the present case, and with Milliken vs. Pratt, is Bell vs. Packard (69 Me., 105), except that instead of signing a guaranty the defendant in that case signed a note as surety for her husband. The Court de-

cided that the note was a Maine contract, and obligatory upon the defendant.

These adjudications proceed upon the considerations that the instrument was not effective for any purpose until delivered to the party for whose benefit it was prepared; that the place where it became operative was the place where the contract was made; and that the disqualification of the married woman in the State of her domicile did not accompany her in making a contract in a State where the disqualification had been removed. They are a consistent and logical application of that fundamental and most important rule of private international law that a contract valid by the law of the place where it is made is valid everywhere.

In Bowles vs. Field (78 Fed. Rep., 742) a married woman domiciled in Indiana went to Ohio and there executed notes as surety for her husband, she being incapacitated from making such contracts by the law of her domicile but not by the law of Ohio. The Court held the contracts valid, affirming the general proposition that the contract of a married woman, valid by the law of the place where it is made, is valid and binding upon her, notwithstanding by the law of her domicile she is incapacitated from making such a contract.

These judgments meet our approval, and upon their authority we are of the opinion that the Court below should have adjudged in favor of the plaintiff.

In Freeman's Appeal the Court conceded that the guaranty was a contract made in Illinois. It based the decision upon the ground that the defendant could not constitute her husband her agent in Connecticut to deliver the instrument. The Court used this language: "'Had Mrs. Mitchell been within the State of Illinois, when she signed the guaranty, it may be that her personal presence would have so far made her a resident of that State as to subject her to its laws, in respect to acts done within its juris-

diction. But as whatever was done in Illinois to bind her to the bank was done under an agency constituted in Connecticut, it is the law of Connecticut which must determine as to the authority of the agent, and so as to the validity of the obligation which he as such undertook to impose upon her by delivery in Chicago of the paper signed by her in Bristol." Inasmuch as the only "agency constituted in Connecticut," or the only necessary agency, was the entrusting her husband with a letter for deposit in the mail, we think the reasoning of the learned Court to be ingenious rather than convincing. The interposition of such an agency was not regarded of sufficient importance to require comment in Milliken vs. Pratt or Bell vs. Packard.

It is to be observed that the State Court did not consider the contract one which ought not to be enforced because violative of the policy of the State. Indeed, by the statute of 1877 (General Statutes of Conn., Section 2796), as to women subsequently married, the disability to make such a contract no longer exists.

We are extremely reluctant to differ with the Supreme Court of Connecticut in a case involving the same facts between substantially the same parties, not only because the opinion of that learned tribunal is always entitled to great consideration, but also because it is in a sense unseemly that there should be diverse judgments under such circumstances between the federal court sitting in that State and the highest court of the State. But the case is one which concerns the rights of a citizen of Illinois acquired before the decision of the State Court, and its decision depends not upon the construction of local laws, but upon the application of the principles of general jurisprudence. In such cases the federal courts are in duty bound to exercise their own independent judgment.

In view of the decision of the Supreme Court of Connecticut we should be glad to certify the question which we have thus considered to the Supreme Court for instructions, but we do not feel

authorized to do so, especially as that tribunal, under the power to issue a *certiorari*, can review our judgment if it sees fit.

The judgment is reversed, with instructions to the Court below to render a judgment for the plaintiff for the amount due by the terms of the guaranty.

LACOMBE, *C. J.*, dissents.

WM. C. CASE AND
PERCY S. BRYANT,
for the Plaintiff in Error.

THEODORE MALTBIE AND
FRANK L. HUNGERFORD,
for the Defendants in Error.

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the Court Rooms in the Post-office Building in the City of New York, on the 18th day of April, one thousand eight hundred and ninety-nine

Present,
Hon. WILLIAM J. WALLACE,
Hon. E. HENRY LACOMBE,
Hon. NATHANIEL SHIPMAN,
Circuit Judges.

FIRST NATIONAL BANK OF CHICAGO
Plaintiff in Error,
vs.
H. DRUSILLA MITCHELL,
Defendant in Error.

Error to the Circuit Court of the United States for the District of Connecticut.

This cause came on to be heard on the transcript of record from the Circuit Court of the United States, for the District of Connecticut, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said Circuit Court be and it hereby is reversed with costs, and with instructions to the Court below to render a judgment for the plaintiff for the amount due by the term of the guaranty. (W. J. W.) (N. S.)

It is further ordered that a mandate issue to the said Circuit Court in accordance with this decree.

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK, } ss.

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 34 inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of First National Bank of Chicago, Plaintiff in Error, against H. Drusilla Mitchell, Defendant in Error, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 19th day of April, in the year of our Lord one thousand eight hundred and ninety-nine, and of the Independence of the said United States the one hundred and twenty-third.

WM. PARKIN,
Clerk.

[SEAL.]

INDEX.

	PAGE.
Petition,	3
Notice of Motion to File,	1
Acknowledgment of Service,	2
Affidavit,	8
Record, Circuit Court of Appeals,	53
Declaration,	54
Answer,	57
Statement of Facts,	59
Guaranty,	62
Opinion, Townsend, D. J.,	69
Judgment, Circuit Court,	73
Assignment of Errors,	74
Opinion, Wallace, C. J.,	79
Judgment, Circuit Court of Appeals,	83
Record, Superior Court,	10
Supreme Court of Errors,	35
Statement of Claim,	12, 37
Guaranty,	15, 22, 38, 45
Exhibits,	13, 22, 38, 45
Answer,	16, 39
Reply,	17, 40
Finding of Facts,	19, 42
Opinion, Supreme Court of Errors,	27
Judgment, Superior Court,	32, 33
Judgment, Supreme Court of Errors,	50, 51

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1898.

H. DRUSILLA MITCHELL, *Petitioner.*

VS.

FIRST NATIONAL BANK OF CHICAGO, *Respondent.*

Petition for a writ of *Certiorari* to U. S. Circuit Court of Appeals for the Second Circuit, in the case of The First National Bank of Chicago, Plaintiff in Error, *vs.* H. Drusilla Mitchell, Defendant in Error.

Statement and Brief for Petitioner.

STATEMENT.

A copartnership, Morse, Mitchell & Williams, of which George H. Mitchell, of Bristol, Connecticut, was a member, located and in business at Chicago, Illinois, was indebted, in

February, 1891, to the respondent, The First National Bank of Chicago, more than twenty thousand dollars, which indebtedness was not thereafter increased.

On February 20, 1891, the respondent bank demanded security for the indebtedness, and said partnership agreed to procure a guaranty of the same from the petitioner, the wife of said George H. Mitchell, then at her domicil in Connecticut.

The guaranty, p. 62, was then filled out on a blank of the respondent bank, signed by said partnership and its individual members, at Chicago, and brought by said Mitchell to his residence in Bristol, Connecticut, where he procured the petitioner, his wife, to sign the paper, and then forwarded it, by mail, to his partner, Morse, at Chicago, who delivered it to the respondent bank.

The petitioner, at the time she signed said paper at her domicil in Connecticut, was a married woman, having been married to said George H. Mitchell, at Bristol, Connecticut, in 1857, where she then and ever since has resided; and she has been, during all her married life, under the disabilities of the common law and incapable of binding herself by contract.

Upon these facts, the Circuit Court of Appeals of the United States for the Second Circuit held that the guaranty was a valid and binding contract of the petitioner, and that she was liable for the indebtedness covered by the guaranty; while the Supreme Court of Errors of the State of Connecticut had held, upon the same facts, stated in the same words, that said guaranty was invalid and void as to the petitioner, and that the petitioner was incapable of making such a contract, and that no action could be maintained against her on such contract in the State of Connecticut.

CLAIMS.

The writ of *Certiorari* should issue:—

1. Because of the diverse decisions: that of the highest Court of the State of Connecticut on the one side, and that of the United States Circuit Court of Appeals for the second Circuit upon the other side.

2. Because the questions at issue in the case are of great importance to a large class of persons, domiciled in the State of Connecticut, incapable by its laws to enter into contracts and against whom actions cannot be maintained in the State Courts.

3. Because the Circuit Court of Appeals, in deciding the questions of the case, should have regarded the laws of the State of Connecticut as the rules of decision.

4. Because the established rules of Comity of a State control the action of all Courts having jurisdiction within the State. Comity refused by State Courts cannot be extended by the Federal Courts.

5. Because the final judgment of the Courts of Connecticut was an adjudication of the questions at issue, and estopped the respondent from further action on the same against the petitioner.

I.

In this case, the antagonism between the State Court and the United States Court is complete. Upon the same facts, stated in the same language, the two Courts have arrived at entirely opposite conclusions. The United States Court of Appeals for the Second Circuit has said, in effect, that the Supreme Court of Errors of the State of Connecticut was in error, has over-ruled its decision, and set aside its conclusions of law.

In Forsyth *vs.* Hammond, 166 U. S. 506, this Court held that such diverse decisions constituted a sufficient ground for the issue of the writ of *Certiorari.*

Every reason given in that case for the issue of the writ applies much more forcibly in this case.

II.

The questions decided are of importance to a large class of persons in the State, the married women who are under the disabilities of the common law; and also to those other numerous persons who have entered or may enter into contracts with them. It is of great importance to the State and its Courts to have finally determined whether the established law of the State and a long line of uniform decisions recognizing and construing it can be disregarded or over-ruled by a Circuit Court of the United States within its jurisdiction. It involves the sovereignty of the State and the right of the sovereignty to regulate its members while within its territory.

No question can or will be made as to the status of this class of persons under the law of Connecticut, and that the contract which was the basis of action in both cases was nugatory and void as to the petitioner, when signed by her in Connecticut. Whether such a void act can become a valid contract when sent across the border of the State to become operative there was the question. The one Court said that, being void in its inception, the act could not be galvanized into a contract by anything that might be done with it in another sovereignty. The other Court said that the question was controlled by principles of general jurisprudence, and the local incapacity could not avail even in the state of domicil as a defense to an action based upon the signed paper, if the paper had been used as a contract in another State.

In view of this conflict, the question should be finally and authoritatively settled by this Court. Such settlement is of importance not only to the people and Courts of the State of Connecticut, but also to those of all the other States where the disabilities of married women under the common law still exist. While we believe that all the cases upon this subject are in line with the decisions of the State of Connecticut, yet statutory modifications of the status of married women in some of the States, together with equities that seemed controlling, have led to expressions, in some cases, which appear to question the soundness of those decisions. In every case, we think it will be evident, upon analysis, that the validity of the acts of the married woman, at her domicil, was determined by the law of her domicil.

The following recent cases taken from different States all touch upon this question, many of them discuss it fully, and are here cited to show the wide interest in having a final decision which will be regarded, everywhere, as conclusive.

Bank of Louisiana *vs.* Williams, 46 Miss. 618.
Dow *vs.* Gould & Curry S. M. Co., 31 Cal. 629.
Union National Bank *vs.* Hartwell, 84 Ala. 379.
Milliken *vs.* Pratt, 125 Mass. 374.
Bell *vs.* Packard, 69 Me. 105.
Hayden *vs.* Stone, 13 R. I. 106.
Freeman's Appeal, 68 Conn. 533.
Ruhe *vs.* Buck, 124 Mo. 178.
Wright *vs.* Remington, 41 N. J. Law 48.
Gibson *vs.* Sublett, 82 Ky. 596.
Robinson *vs.* Queen, 87 Tenn. 445.
Spearman *vs.* Ward, 114 Pa. St. 634.
Armstrong *vs.* Best, 112 N. C. 59.
Evans *vs.* Cleary, 125 Pa. St. 204.

III.

The Statute of the United States, Sec. 721, providing that the laws of the several States shall be regarded as rules of decisions in trials at common law in cases where they apply, was intended to prevent such a conflict as is here presented.

The Circuit Court of the United States for the District of Connecticut, regarding the law of the State of Connecticut as the rule of decision, in rendering judgment accepted the opinion of the Supreme Court of Errors of that State as law.

The Circuit Court of Appeals found that there was error in the judgment of the Circuit Court; and, reversing that judgment, directed that the law of the State of Connecticut be disregarded.

The demoralizing effect of such a situation and its tendency to impair confidence in judicial conclusions cannot be insisted upon too strongly.

But, further than this, the law of Connecticut does not permit an action at law to be maintained against this class of married women upon such a contract in any Court in its jurisdiction.

Neither will comity be extended in that State, and effect given to the laws of another State, if the contract is prohibited or contrary to the policy of the laws of the State. Reynolds *vs.* Geary, 26 Conn. 179, 183. This being the law of the State, must be a rule of decision within the terms of the statute.

IV.

Can there be a different rule of comity for the Courts of a State and for the United States Courts sitting in that State?

Can a judicial door closed by the State be opened by the Courts of the United States?

The confusion arising from permitting a conflict upon this question would be more than unseemly.

In this case, the question arises between citizens of Illinois and Connecticut, and it relates solely to the capacity of a married woman to make a contract. Originally, married women in each State were under the disabilities of the common law. The State of Illinois, by statute, has removed those disabilities. The State of Connecticut has not removed them. Prior to the change in Illinois law, the contract in question would have been void in either State.

The State of Connecticut, in vindication of its laws and for the protection of its citizens, refuses to permit the alleged contract to be a basis of action in its courts.

The United States Court says that the statute of Illinois having made the void paper a contract it is such when it comes back to Connecticut, and will be recognized by the United States Court and enforced against the citizen of Connecticut, within the State of Connecticut, notwithstanding the law of the State and the protection the State extends to its citizens. This position confers upon non-residents rights of action which are not permitted by the State to its citizens.

Such a contract could not be enforced by a citizen of the State against an incapable married women domiciled in the State. No rule of comity requires that a non-resident should have a right of action which is denied to the citizen.

The rule which was stated in *Saul vs. His Creditors, 8 Martin 665, 5 La. Term Rep. (N. S.) 569*, that contracts cannot be enforced within a State which are in opposition to its laws, has since been followed.

In the case of *Hayden vs. Stone 13 R. I. 106*, the Court said:—"A contract valid by the laws of one State cannot be enforced in another, unless such contract made between its own citizens could be enforced there. Any other doctrine would produce confusion, some persons and acts being regulated by local laws and some by foreign laws."

In *Ruhe vs. Buck, 124 Mo. 178*, the Court say:—"The spirit of comity does not require that a non-resident shall be allowed a remedy which is, by the policy of the State law, denied to its own citizens.

Without multiplying cases, which are numerous, it is sufficient to say that the rule as here stated is held rigorously in the State of Connecticut, as shown by *Reynolds vs. Geary, 29 Conn. 176, 183*, and *Freeman's Appeal, 68 Conn. 533, 542.*

The principle of law that contracts cannot be enforced in a State which are in opposition to its laws means that such contracts cannot be enforced in any tribunal, State or Federal.

No claim that the questions in this case are determined by the application of the principles of general jurisprudence can justify a Federal court, with jurisdiction within the State, in refusing to recognize the position of the State upon this question, or in setting aside the bar which the State has established.

V.

Every question arising in this case had been fully adjudicated in the State Court in Freeman's Appeal. This adjudication, which the respondent voluntarily sought, should estop it in prosecuting the action in the Federal court. This judgment was an admitted fact in the case in the Federal court, and the

opinion of the Circuit Court of Appeals is largely a denial of the soundness of the position of the State Court in the adjudication it made.

The case of *Forsyth vs. Hammond, 166 U. S. 506, 518,* and the cases there cited hold that the Court is bound to recognize such estoppel when the judgment is brought to its attention.

Finally; the decision of the case in the Supreme Court of Errors of the State of Connecticut was by a united court, all its five judges concurring. The decision of the case in the Circuit Court of Appeals was by a divided court, two judges, only, concurring. The remaining Circuit judge dissented, sustaining the view of the judge who tried the case in the Circuit Court. The Federal judges being equally divided in the case, the judicial preponderance which over-rides the opinion of the highest court of a State is found in the difference in rank between a Circuit Court Judge and a District Court Judge while Judge of a Circuit Court.

This margin is too narrow to be satisfactory to any judicial mind and undoubtedly induced the suggestion at the close of the opinion by the Circuit Court of Appeals, that this Court might review the case on *Certiorari.*

We submit that regard for the dignity of judicial procedure and respect for the opinions of the highest Court of the State of Connecticut, as well as the gravity and importance of the case and of the questions involved in its decision, require that the case should be removed to this Court for review.

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